United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

74-2290

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2290

UNITED STATES OF AMERICA,

Appellee,

—against—

EDMUND ROSNER,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX
(Volume I—Pages A-1 to A-650)

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United States Attorney for the Southern District of New York
Attorney for the United States of America

NOV 18 1974
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

Judge Bauman 72 CRIM. 782 Hyatt J

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	AUSA Elliot G. Sagor
1 (M) [illegible] (all cts.)	
2 (M) [illegible] (all cts.)	
3 (M) and [illegible] (all cts.)	
	For Defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk		3/26/73	A Krieger	5 —	
J.S. 3 mailed 1, 2, 3 ✓	Marshal		3/27/73	MSTPrado		5 —
~~Violation~~ 1, ✓	Docket fee					
Title 18						
Sec. 1503 & 2 Obstruction of justice by influencing officer(ct.2) 371 Removal of Govt. Papers (ct.3) 2071(b) Failure of employee of U.S. Attys office (cts.4-8) 371 Conspiracy so to do. -- EIGHT COUNTS						

OCT 2 1974 PENN
SECOND CIRCUIT

DATE	PROCEEDINGS
7-5-72	Filed Indictment
7-5-72	Bench Warrent ordered on all Defts. - IRIZARRY, J.
7-5-72	Bench Warrents vacated. All Defts. (Attys present) plead not guilty. Bail fixed at $15,000. unsecured PR bond to be posted by 1 P.M. on 7/6/72. Bail limits extended to continental limits of U.S. Defendants ordered photographed & fingerprinted. 10 days for motions IRIZARRY, J.
7-5-72	Case assigned to Judge Bauman for all purposes - IRIZARRY, J. A
7-5-72	Bench warrants issued All Defts.
8-17-72	Filed affdvt. of Elliot G. Sagor, AUSA in opposition to motions for discovery and inspection and for bill of particulars. Filed Govt's memorandum of law....
9-1-72	Rosner-Filed affidavit and notice motion various relief, XXXX Filed written summaries of the substance of a defendant's statement mac

DATE	PROCEEDINGS
	to a government agent are discoverable under rule 16(a)(1) Federal Rules of criminal procedure.
9-25-72	Filed affdvt. by Elliot G. Sagor AUSA. in opposition to deft. ROSNERS motion filed 9-1-72
9-25-72	ROSNER - Filed Govt's memorandum in opposition to defts. motion filed 9-1-72
10-3-72	Filed Govt's Bill of Particulars.
10-17-72	ROSNER - Filed affdvt. and defts. notice of motion for an order dismissing indictement.
10-17-72	ROSNER - Filed memorandum of law in support of motion to dismiss. (filed by A.J. Krieger)
10-20-72	E.ROSNER - Filed afdvt.& notice of motion to suppress evidence.....Filed memorandum of law..
10-27-72	E. ROSNER - Filed Govts memorandum of law in opposition to defts motions to dismiss indictement and to suppress
10-30-72	FILED GOVTS SUPPLEMENTAL BILL OF PARTICULARS
11-14-72	All defts. - Motion to dismiss ct. 3 granted -- Bauman, J.
11-20-72	LAMATTINA - Atty. Lawrence Hochheiser present - Deft. withdraws his plea as to cts. 1 and 4 and now pleads guilty to cts. 1 and 4. P.S.I. ordered. Bail continued pending sentence. Sentence adj. Sine Die JURY EMPANELED ---- Bauman, J.
11-21-72	De STEFANO - Atty. Gustave H. Newman present - Deft. withdraws not guilty plea as to all counts and now pleads guilty to counts 1,2,4, thru 8 incl. P.S.I. ordered. Govt's motion to remand deft. granted. Bail set at $15,000. cash or surety to be posted by 4:00 P.M. today. Deft. to surrender to US Marshal on Nov. 27-72 at 10:00 A.M. Sentence adj. sine die - Bauma
11-21-72	E. ROSNER - Jury Trial continued before Bauman, J.
11-24-72	E. ROSNER - Trial continued
11-27-	E. ROSNER - Trial continued
11-27-72	De Stefano - (Atty. G. Newman present) Application for adjournment of surrender until conclusion of trial granted on condition that bail be increased to $50,000. cash or surety bond and the court directs the deft. to repo to probation dep. daily by 4:00 P/M - bail to be posted not later than 4:00 P.M. on 11-28-72. -- Bauman, J.
11-22-72	Rosner, Filed envelope ordered sealed and impounded and placed in vault in Room 602.
11-27-72	DeStefano- Filed following papers rec'd from U.S. Magistrate, docket s appearance bond.

DATE	PROCEEDINGS
11-28-72	Rosner - Jury trial continued
11-29-72	Rosner - " " "
11-30-72	Rosner - " " "
12-1-72	Rosner - " " "
12-4-72	Rosner - " " "
12-5-72	Rosner - " " " and concluded. The jury finds the deft. GUILTY on each of counts 1,2,6,7 and 8 - NOT GUILTY on each of counts 4 and 5. P.S.I. ordered. Sentence adj. to Jan. 15, 1973 at 10:00 A". Bail cont'd pending sentence. --- Bauman, J.
12-8-72	DeStefano- Filed following papers rec'd from Magistrate, Docket sheeex appearance bond.
12-15-72	Rosner- Filed Transcript of record of proceedings, dated 7-14-72
12-15-72	" - Filed Transcript of record of proceedings, dated 8-23-72
12-15-73	" - Filed Transcript of record of proceedings, dated 8-24-72
12-15-72	" - Filed Transcript of record of proceedings, dated 9-15-72
12-15-73	" - Filed Transcript of record of proceedings, dated 9-29-72
12-15-72	" - Filed Transcript of record of proceedings, dated 10-4-72
12-15-72	" - Filed Transcript of record of proceedings, dated 10-20-72
12-15-72	" - Filed Transcript of record of proceedings, dated 11-8-72
12-15-72	" - Filed Transcript of record of proceedings, dated 12-4-72
12-15-72	" - Filed Transcript of record of proceedings, dated 12-5-72
12--15-72	" - Filed transcript of charge of the court
7-21-72	Rosner - Filed notice of motion for discovery & inspection, etc.
12-15-72	Rosner- Filed affdvt. of Elliot G. Sagor AUSA in opposition to defts pre-trial motion.
12-15-72	Filed Goverment's memorandum of law
12-15-72	Filed Goverment's supplemental memorandum of law in answer to defts suppl. memo of law seeking discovery
12-15-72	Filed Goverment's supplemental memorandum of law at request of Court re count 3 of the indictment

over

C

PROCEEDINGS

12-15-72 Filed Goverment's requested Voir Dire questions of prospective jurors.

12-[illegible] Filed Goverment's factual requests to charge

12-[illegible] Filed Goverment's requests to charge

12-[illegible] Filed copy of supplemental Goverment's requests to charge.

12-15-72 Filed defendant Rosners requests to charge

12-15-72 ROSNER - Filed Opinion #39031 in re defendants motion to dismiss indictment and to suppress evidence. -- The motion to dismiss is granted as to count 3 and as to all reference to 18 U.S.C. § 2071 in Count 1. The motion is denied in all other respects. The motion to suppress is also denied. It is so ordered. --- Bauman, J. (m/n)

12-14-72 Filed Transcript of record of proceedings, dated 11-17-72

12-14-72 Filed Transcript of record of proceedings, dated 11-17-72

12-14-72 Filed Transcript of record of proceedings, dated 11-20-72

12-18-72 DiStefano-(attv. present) Sentence set for 2-5-73 at 9:45 A.M. Bauman, J.

1-12-73 Rosner- Filed affidavit and notice of motion for a new trial.

" Filed memorandum of law in support of motion for new trial.

-15-73 Rosner-Filed affidavit and notice of motion for continuance of dat e of sentence.

1-22-73 Rosner-Filed govt's affidavit of writ of habeas corpus, writ iss. ret 1-26-

-29-73 Rosner-Filed memo endorsed on motion dtd. 1-12-73 for new trial, Motion Der Bauman, J.

1-26-73 Rosner- Motion pursuant to Rule 33-F.R.C.P. for an order setting aside the verdict and granting of a new trial. Motion denied. Sentence adjourned to Feb. 1, 1973 at 10 A.M. Bauman, J.

D

PROCEEDINGS

2-5-73	Rosner- Filed affidavit and notice of motion granting a hearing, and upon such hearing, for a futher order setting aside the verdict heretofore rendered and granting him a new trial.
2-2-73	Rosner- Motion for a new trial. Motion date to be set. Bauman,J.
2-5-73	DeStefano- Sentence adjourned to 2-20-73 at 9:30 A.M. Bauman,J.
2-8-73	Rosner- Deft's motion under Rule 33, granted. Hearing begun and adjourned Sine Die. Bauman,J.
2-13-73	*Filed Transcript of record of proceedings, dated* Nov. 20, 21, 22, 24, 27, 28, 29, 30, 1972
2-13-73	*Filed Transcript of record of proceedings, dated* Dec. 1, 4, 5, 1972 Jan. 26, 1973 Feb. 2, 8, 1973.
~~2-15-73~~	~~Juan J. Contreras-Mailed voucher I of the CJA to the A.O. approved. Cooper,J.~~
2-21-73	ROSNER- Hearing continued from 2-8-73
2-22-73	ROSNER- Hearing continued and concluded. Decision reserved. -- Bauman, J.
2-27-73	Filed Petition for Writ of Habeas Corpus- Writ Entered 3/28/73
3-14-73	Filed affirmation of Staff Atty, Legal Division, N.Y.P.D. John MaGuire as an in camera application to quash subpoena 10-10-72.
3-14-73	Rosner-Filed affirmation of Seymour R Rotker Chief ADA Bronx Y County as an in camera application to quash subpoena 10-10-72.
3-14-73	Filed Govt's affidavit by Elliot G. Sagor AUSA.
3-14-73	Rosner-Filed order that the deft's subpoena be quashed as to Luis M. Neco Deputy Comm. legal matters N.Y.P.D. and John Maguire staff Atty. and further ordered that the Deputy Comm. Legal Matters N.Y.P.D. preserve all affidavits and exhibits submitted to the Court. Bauman,J.

CONT'D

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PROCEEDINGS

3-15-73	Rosner-Filed affidavit of Seymour Rotker Chief ASST D.A. Bronx County.
3-15-73	Rosner-Filed order quashing subpoena's by the deft Rosner to Mario Merola D.A. Bronx County & Seymour Rotker & D.A. Carl Bornstein and is her ordered that the ~~xxxxx~~ D.A. Bx. County preserve all affidavits and exhibits submitted to this Court. Bauman,J.
3-15-73	Rosner-Filed motion for leave to file brief amicus curiae and brief amicus curiae of New Civil liberties union in support of deft's motion und 33
3-15-73	Rosner-Filed govt's memorandum of law.
3-15-73	Rosner-Filed govt's affidavit in opposition.
3-15-73	Rosner-Filed deft's memorandum of law.
3-15-73	Rosner-Filed deft's supplemental memorandum of law.
3-15-73	Rosner-Filed Govt's memorandum of law.
3-15-73	Rosner-Filed Govt's supplemental affidavit in opposition.
3-15-73	Rosner-Filed deft's affidavit.
3-15-73	Rosner-Filed Govt's memorandum of law.
3-15-73	Rosner-Filed Govt's affidavit in opposition to deft's motion for a new tri based in newly discovered evidence.
3-15-73	Rosner- Filed Opinion # 39315 on deft's second motion for a new trial, ***"For all the reasons stated above, Rosner's second motion for a new trial must be, and hereby is DENIED. The deft is ordered t appear for sentence at 9:30A.M. on March 20,1973." SO Ordered Bauman,J.
3-13-73	Filed Govt's affidavit in opposition.
3-13-73	Rosner-Filed reply affidavit by Paul G. Chevigny atty Civil Liberties Uni
3-13-73 *******	Filed order that leave is hereby granted for the New York Civil Liberties to file an amicus curae brief in support of deft Rosner's motion fo new trial . Bauman,J.
3-20-73	EDMUND A.ROSNER(Atty.present)Deft is committed to custody for imprisonment for a period of FIVE YEARS on each of counts 1,2,6&7 & 8 to run concurrently with each other...Bail continued in sum of $15,000 Personal Recognizance Bond pending appeal. Condition of bail being that appeal is expediously pursued.....Bauman, J... (Entered 3-21-73)
3-20-73	Rosner- Filed notice of appeal to the USCA for the 2nd. Circuit for the Judgment entered on 3-20-73.(cpies mailed to deft. & US. Atty.)

PROCEEDINGS

3-21-73 E. A. Rosner — Filed Transcript of record of proceedings, dated 2-[illegible]-73

3-21-73 E. A. Rosner — Filed Transcript of record of proceedings, dated 2-21-73

3-21-73 E. A. Rosner — Filed Transcript of record of proceedings, dated 3-22-73

3-21-73 E. A. Rosner — Filed Transcript of record of proceedings, dated 3-20-73

4-5-73 Rosner-Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.

5-17-73 Rosner-Filed designation of exhibits by stipulation.

5-17-73 Rosner-Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.

11-27-73 EDMUND ROSNER Filed Govt. Sentencing memo.

1-4-74 NICHOLAS LAMATTINA- Filed Order. Ordered that minutes of Nov. 20, 72 of a plea entered by deft. be unsealed.Ordered that Court Reporter for Sou.Dist. of N.Y. transcribe and docket said minutes. BAUMAN,J.

1-4-74 Filed transcript of record of proceedings dated Nov. 20-72.

2-20-74 Filed one envelope ordered sealed , placed in vault in Room 602. BAUMAN,J.

2-19-74 NICHOLAS J. LAMATTINA - Deft. (Atty. present) Filed judgment and issued copies.
It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of ONE YEAR AND ONE DAY on each of cts. 1 & 4. Sentence imposed on cts. 1 & 4 are to run concurrently with each other.
Defts. motion to dismiss cts. 2,3,5,6,7 & 8 is granted with the consent of the Govt.
Deft. is to surrender March 19-74 at a place designated by the Bureau of Prisons.
Bail continued to date deft. is to commence service of sentenct.
BAUMAN,J.

2-20-74 NICHOLAS DeSTEFANO - Deft.(Atty.Present) Filed Judgment and committment and issued copies.
It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of ONE (1) YEAR and ONE (1) DAY , on each of Cts. 1,2 & 4 thru 8 inclusive. Sentence imposed on each of cts. 1,2,& 4 thru 8 inclusive are to run concurrently with each other, subject to the provisions of Section 4208(a)(2) of Title 18 U.S.C., deft. shall become eligible for parole at such time as the Board of Parole may determine.
Deft. to surrender March 19-74 at a place to be designated by the Bureau of Prisons.
Bail continued to date deft. is to commence service of sentence.
The Court recommends commitment to a minimum security type institution.
BAUMAN,J.

3-21-74 EDMUND A. ROSNER - Filed affdvt and notice of motion for new trial.

Cont'd on page 8

	PROCEEDINGS
3-21-74	EDMUND A. ROSNER - Filed defts. brief in support of motion for new trial.
4-3-74	NICHOLAS J. LAMATTINA - Filed true copy of J/C with marshals return; deft. delivered to Eglin Air Force Base 3-25-74.
4-3-74	NICHOLAS DeSTEFANO - Filed true copy of J/C with marshals return; deft. delivered to Eglin Air Force Base 3-25-74.
5-20-74	EDMUND A. ROSNER - Filed affdvt and notice of motion granting counsel interview with Robert Leuci.
5-28-74	EDMUND A. ROSNER - See official court reporters minutes for courts determination.
5-29-74	Filed one sealed envelope; Ordered sealed and impounded. Placed in Vault Room 602. BAUMAN,J.
6-13-74	EDMUND A. ROSNER= Filed Deft's Notice of Motion and Affdvt for Discovery and Inspection. BAUMAN,J.
6-13-74	EDMUND A. ROSNER= Filed Deft's Memorandum of Law in Support of his motions for Discovery and Inspection.
6-18-74	NICHOLAS DeSTEFANO=Filed Deft's Notice of Motion with Supporting Affdvt for reduction of Sentence imposed on 2-20-74.
6-18-74	NICHOLAS J. LAMATTINA= Filed Deft's Notice of Motion with supporting Affdvt for reduction of Sentence imposed on 2-19-74.
6-18-74	Filed True Copy of U.S.C.A. order with Mandate attached. The Judgment of the District Court is affirmed. It is further ordered, adjudged and decreed that the sentence of the court below be and it hereby is vacated and that the action be and it hereby is remanded to said District Court for resentencing in conformity with the opinion of this court. (Mailed Notice's)
6-21-74	EDMUND A ROSNER= Exhibits 1, 2, and 3, ORDERED SEALED & IMPOUNDED THIS DAY--BAUMAN,J.
6-24-74	Filed Order that no deft. or his counsel or investigator shall make any disclosure of matters contained in material turned over to them involving Robert Leuci except as may be necessary to effectuate the proceeding in this case.....It is further ordered that the prohibition against access by others and disclosure to others and disclosure shall remain in effect throughout the proceedings in this case and until such time as the Court removes or modifies these prohibitions and in no event shall any of the defts or their counsel make or have any public disclosures or discussions or conversations concerning any of the matters contained in any of the matters contained in any of the papers to be supplied...Bauman,J.
7-3-74	EDMUND A. ROSNER= Exhibits 1, 2, and 3, RE-ORDERED SEALED AND IMPOUNDED THIS DAY, BY ORDER OF BAUMAN,J.
7-2-74	EDMUND A. ROSNER= Filed ORDER = The Gov't shall be permitted to furnish to the Special State Prosecutor a retyped copy of Court's Exhibit 1 of May 28, 1974, ordered sealed by the Court. A copy of this order shall be served upon the Special State Prosecutor's office at the time the retyped copy of the above-mentioned exhibit is furnished to said office. IT IS SO ORDERED--BAUMAN, J.(Mailed Notice)

	PROCEEDINGS
6-19-74	EDMOUND ROSNER= Filed Petition for Writ of Certiorari from the Supreme Court of the United States, same is denied without prejudice for the defendant to the SDNY to consider a motion for a new trial.
6-17-74	NICHOLAS [illegible]= Filed the following papers rec'd from Mag.Raby-(Mag.#72-1089): Docket Sheet - Appearance Bond for the Sum of $15,000. dtd 1-6-72.
7-3-74	EDMOUND ROSNER= Filed the following rec'd from Mag. Raby - (Mag. #72-1091): Docket entry Sheet - Appearance bond for the sum of $15,000. dtd 1-6-72.
6-17-74	NICHOLAS [illegible]= Filed the following papers rec'd from Mag.Raby (mag.#72-1088): Docket entry Sheet - Appearance bond for the sum of $15,000. dtd 1-6-72.
6-5-74	Filed transcript of record of proceedings, dated 2-22-74
6-21-74	EDMUND ROSNER= hearing held & adj'd to 7-1-74 --BAUMAN, J.
JUL 2-74	Filed transcript of record of proceedings, dated JUNE 21, 1974
JUL 2 74	Filed transcript of record of proceedings, dated MAY 28, 1974
JUL 2 74	Filed transcript of record of proceedings, dated FEB. 19, 1974
7-1-74	EDMOUND ROSNER= Conference held. Sentence of Deft ROSNER on Aug. 16, 1974 @ 2:30PM WYATT, J.
7-1-74	" " = hearing on evidentiary motions for a new trial, etc. --Bauman, J.
7-2-74	" " = hearing cont'd.
7-3-74	" " = hearing cont'd and adj'd to 7-15-74
7-15-74	" " = hearing resumed.
7-16-74	" " = Hearing cont'd & concluded. Dec. Res. --- BAUMAN, J.
7-24-74	Filed Deft's Memorandum of Law. (Deft. EDMUND A. ROSNER)
7-26-74	Filed transcript of record of proceedings, dated JAN 16, 1973
7-26-74	Filed transcript of record of proceedings, dated JAN 16, 1973
8-8-74	Filed Order to Show Cause for an order enjoining deft. Edmund A. Rosner, his agennts, etc from making any inquiry of the petit jury which heard and decided this case.....ret. 8-12-74, in room 706.
8-8-74	Filed Govt's Supplemental Memorandum of Law in support of Govt's Order to Show Cause enjoining deft. Rosner.
8-9-74	EDMOUND ROSNER= File true copy of order from the USCA, 2nd Circuit, the petition for a writ of mandamus - Ordered that said petition be and it heredby is Denied..., FUSARO, CLERK.
8-16-74	EDMUND A. ROSNER-Filed Gov't affdvt in opposition to deft's motion for a new trial.
8-16-74	EDMUND A. ROSNER-Filed Gov't pre-trial memorandum of law.
8-16-74	EDMUND A. ROSNER-Filed Gov't memorandum of law in opposition to motion for new trial.

cont'd Page #10

DATE	PROCEEDINGS
8-14-74	EDMUND A. ROSNER-Filed Gov't post-hearing memorandum of law.
8-14-74	EDMUND A. ROSNER-Filed OPINION #41,093 Motion for a new trial denied--Bauman,J. Mailed notices.
8-16-74	EDMUND A. ROSNER-Filed JUDGMENT and COMMITMENT-It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of counts 1,2,6,7 and 8, to run concurrently with each other. Deft. continued released on own recognizance pending appeal.....Wyatt,J.
8-22-74	EDMUND A. ROSNER-Filed Notice of Appeal from the judgment of conviction and sentence rendered by Judge Wyatt on 8-16-74. Mailed notice to Edmund Rosner, 401 Broadway, N.Y.C. and U.S. Attorney's Office.
Aug 26-74	Filed Govt's memorandum of law.
Aug 26-74	Filed affdvt in opposition to defts' motion for post-trial discovery.
Aug 26-74	Filed letter of attys. for deft Rosner to Judge Bauman dated Aug 6-74.
Aug 26-74	Filed letter of attys. for deft. Rosner to Judge Bauman dated Aug 9-74.
Aug 26-74	Filed transcript of proceedings dated July 1-74.
Aug 26-74	Filed transcript of proceedings dated Aug 16-74.
Sep 3,74	EDMUND A. ROSNER-Filed notice of certification and transmittal of the record on appeal
8-26-74	Filed transcript of record of proceedings, dated May 22-74
8-26-74	Filed transcript of record of proceedings, dated July 1-74

A 10-a

T-3830

Form A. O 147 (July 1963)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

APPEAL FROM	CASE NO.
SOUTHERN DISTRICT	74-2290

TITLE OF CASE	ATTORNEYS FOR ~~XXXXXXXX~~ Appellee
UNITED STATES OF AMERICA, Plaintiff-Appellee, v. EDMUND A. ROSNER, NICHOLAS DeSTEFANO, NICHOLAS J. LAMATTINA, Defendants, EDMUND ROSNER, Defendant-Appellant. CR	United States Attorney United States Courthouse Foley Square New York, N.Y. 10007
	ATTORNEYS FOR ~~XXXXXXXX~~ Appellant
	Alan Dershowitz, Esq. ~~14 Concord Avenue~~ Harvard Law School Cambridge Mass (495-4617 Fisher, Rosner and Scribner, Esqs. Nancy Rosner, Esq. 401 Broadway New York, N.Y. 10013 (925-8844)

No. BELOW: 72 CR 782

JUDGE BELOW: I.B. Wyatt

DATE OF JUDGMENT: 8-16-74

NOTICE OF APPEAL FILED: 8-22-74 1/-

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
10-2-74	Action Docketed	$ 50 00		
10-4-74	Disb acct 10069(A702)CD# 56		50 00	

A 10-B

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

CASE NO. 74-2290	U.S.A. v. Edmund A. Rosner

DATE	FILINGS—PROCEEDINGS	Filed
8-27-74	**Filed copies of docket entries and notice of appeal**	
9-5-74	Received record (original papers of district court)	
9-27-74	Filed form A	
10-2-74	**Received docket fee**	
10-2-74	**Filed record (original papers of district court)**	
10-2-74	Filed order: removal of record; appellant's brief and appendix by 11-1-74 w/dismissal in default; U. S. brief by 12-2-74; argument ready to be heard week of 12-9-74	

FPI MI—5 15 69 10M 3583

GOVERNMENT
EXHIBIT
U.S. Dist. Court
S.D. of N.Y.
GX25½d.

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Transcription of conversation recorded on September 30, 1971 between Detective Robert Leuci, Detective Nicholas Lamattina, Nicholas De Stefano and Dominick Marcone at 100 Centre Street and in [illegible] Lin Heong Restaurant (Tape 930B).

(Noises - Criminal Courts Building, 100 Centre Street - several minutes)

Det. Leuci — Ho, you look like a new man.

Det. Lamattina — What's happening?

Det. Leuci — Not much. I'll tell ya, something really fantastic in my opinion. My guy is the guy interviewing Martinez.

Det. Lamattina — Yah

Det. Leuci — Right, so he knows and at this time - [illegible] apparently they haven't got the broad but they [illegible]

DET. LAMATTINA: What?

DET. LEUCI: They haven't got the girl, the wife, right

DET. LAMATTINA: But she already had testified three weeks ago, Bob.

DET. LEUCI: I don't think so.

DET. LAMATTINA: On something else.

DET. LEUCI: Yeah, but nothing to do with this, though.

DET LAMATTINA: What happened here? This Fed took interest in this case, right? Al i ht (Inaudible 2 sec.)

DET. LEUCI: He's a Fed.

DET LAMATTINA: I thought it was something else she said.

DET. LEUCI: No, no, no, no, no, no, no, she went (Inaudible 2 sec.)

DET. LAMATTINA: So he already spoke to the lawyers, right?

DET. LEUCI: I don't know if they spoke to the wife. They didn't speak to the wife as far as I know.

DET. LAMATTINA: What did he say to you?

DET. LEUCI: They're trying to get the wife. They're sending out subpoenaes now for all the bank records right; and these people allege. They got a bunch of people allege they gave this guy the money too, al right?

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DET. LAMATTINA: Yeah.

DET. LEUCI: Right, so they're sending out for their bank records. They're going to show this money was withdrawn on all these different dates. Now, Nickie you know what it come to? It comes to, like $135,000 fucking dollars.

DET. LAMATTINA: I know, I know, I saw him this morning I told him what you told me. I said the guy's meeting me at two o'clock; so if you want to go talk with him, it's up to you. I'll meet him in the restaurant. You know what I mean I figure maybe we could do something with this guy.

DET. LEUCI: But what did this guy do here?

DET. LAMATTINA: I'm telling you what happened. From what I understand, this is what I gathered. He went to a friend of mine, my friend Mick.

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DET. LAMATTINA: Now, are you sure it's Nick Marcone or Nick De Stefano?

DET. LEUCI: Nick Marcone.

DET. LAMATTINE: He went to this friend of mine Nick De Stefano. You must know him from Brooklyn (Inaud 2 sec.). Frankie Russo.

DET. LEUCI: Oh yeah, sure, yeah.

DET. LAMATTINA He went to them. Nickie calls me up; he says "you know Bell and these guys," I say, "yah," he says "do me a favor, ask them," I go see Bell, and "Dougie says this is the story, alright $25,000." He goes back to this guy, I don't what he told him maybe thirty-five or forty-thousand.

DET. LEUCI: Thirty?

DET. LAMATTINA: No, let me finish, he told Marcone, Marcone goes back to the people and he probably tells them a hundred and whatever he told them.

DET. LEUCI: Hmn.

DET. LAMATTINA: So let's say Nickie gets their twenty-five plus twenty for himself is forty-five or whatever he made on it, I don't know, so this is what happened. How you doing?

DET. LEUCI: They went for a hundred and thirty...

DET. LAMATTINA: I know but I don't know what Marcone told them maybe Marcone told them ah (Inaudible sec.) how many other people were involved?

DET. LAMANNA: I told him to watch me walking out and follow us.

DET. LEUCI: How good do you know these guys?

DET.LAMANNA: I know (Inaud. 2 sec.) good as far, as him doing anything for us, he's alright. Now as far as Marcone is concerned he's alright guy as far as
077 I'm concerned but I mean you have to go further with the guy (Inaudible 2 sec.)

DET. LEUCI: I heard he's alright but I also heard he fucked a lot of people exact some kind of deals.(Inaudible sec.) You know that guy Cusi-Coca (Inaudible sec.) There's a whole story with Cusi-Coca and him.

DET. LAMANNA: Don't know, yeah

DET. LEUCI: Yeah ya know like a figure was set and the day before we're supposed to go off this guy doubled
082 it.

DET. LAMANNA: Well, I don't know.

DET. LEUCI: Marcone and everybody lost out on it, with the. Some people liable to get hurt because of this guy.

DET. LAMANNA: I don't know about that I don't know why or how the $100,000 the $130,000 come on this. He could have been the second party. Nickie could have been the third party, follow me?

DET. LEUCI: Yeah.

DET. LAMATTINA: Somebody could have went to Marcone and asked him if he could do anything with this case so probably then Marcone ran to Nickie and Nickie came to me, you understand?

DET. LEUCI: Yeah.

DET. LAMATTINA: Then we made one meet, I got a figure; he went back, told him, before you know it boom-boom-boom-the guys in court bang, bang, bang and that was the end of the deal. I got a few dollars from Nick, we made a few bucks and that was that. I now knew...

DET. LEUCI: Yeah, a few dollars, that's the whole point, these guys are still making figures that are unreal.

DET. LAMATTINA: I didn't realize. You know when I found out about $130,000? After this guy Martinez got popped again, but I think Dougie Reed popped him again, didn't he?

DET. LEUCI: Yeah, but like you know -

DET. LAMATTINA: That was a mistake.

DET. LEUCI: Yeah.

DET. LAMATTINA: They popped him again, right after the time the guy was in West Street and jumped out of the window.

DET. LEUCI: Right. Right.

DET. LAMATTINA: Right well, that's when I heard $130,000.

DET. LEUCI: Do you think they really switched the junk? I don't think so. I think there was no junk there really, but they're saying they switched the junk.

DET. LAMATTINA: Well, I don't know, I didn't ask.

DET. LEUCI: Yeah.

DET. LAMATTINA: You know like somebody comes to me somebody says "you know Bob Leuci? "I'll go to you, Bobby, Blah, Blah, Blah, the guy is OK" You want me to get the money or not, cause then (Inaudible 3 sec.)

DET. LEUCI: (Inaudible 2 sec.) they did that too, right? That's the point.

DET. LAMATTINA: I don't know what they did, or, all I know is I don't know....

DET. LEUCI: They're going to try and subpoena them, apparently they're going to try and subpoena the cops. They want the cops too, no, these guys, They want Bell and Martinez.

DET. LAMATTINA: They want them up tight?

DET. LEUCI: Who are you kidding?

DET. LAMATTINA: Spoke to your friend?

DET. LEUCI: Yah, I spoke to him last night.

DET. LAMATTINA: Does he know you're talking to me?

DET. LEUCI: No, I told him I could get to somebody, you know.

DET. LAMATTINA: Well what is he, what's his angle on this?

DET. LEUCI: Well, I originally, I originally thought it was like ah, you know it was the right thing to do because he felt I was up there, maybe I was involved. Apparently he's looking to do something, you know.

DET. LAMATTINA: Make a score?

DET. LEUCI: Sure.

DET. LAMATTINA: Why'nt you talk to these guys right now. Cause I told em before, when I told em about the case, I tell em (Inaudible) "gee, I don't know what you're talking about." I says look don't give me that fucken shit I I don't like that, I'm sticking my neck out coming to you; I don't have to. My friend don't have to come to me - because he knows I know ya...

DET. LEUCI: Yeah

DET. LAMATTINA: Don't pull none of this bullshit. You know what I'm talking about the Queens thing. Then he says "Yeah I know." Well, at two o'clock we'll have more information we'll make sure, we'll check on it.

DET. LEUCI: Yeah, all right - yeah. Listen we can, they can get to Martinex.

DET. LAMATTINA: How's that?

DET. Leuci — Oh, for a figure.

DET. LAMATTINA — Who? This guy?

DET. LEUCI — This guy -

DET. LAMATTINA — Whose he

DET. LEUCI — Martinez apparently puts a tremendous amount of trust into ya know my friend.

DET. LAMATTINA — Oh yeah

DET. LEUCI — He's interviewing em. He's doing everything.

UNK. FEMALE — Hi, Nick.

DET. LAMATTINA — Hi. Well, I don't know what he did with the money or how many people split the money involved. All I know is what Nick De Stefano told me, right. I even told Nick to come here too.

DET. LEUCI — (Inaud.2 Sec.) Wait a minute. I'm going to sit down here.

DET. LAMATTINA — No, it is all right, no problem cause he's the one who was involved with him you understand.

DET. LEUCI — Yeah

DET. LAMATTINA — And Ya know, I told him hey look, this fucken thing is way off. I don't know the whole story, the whole full story as far as I know I never got it.

(Inaud.3sec.)

What I found out before was that, I didn't believe it, the guy's got to be out of his mind to go for that kind of money I mean let's

face it when you've been in the business, like I've been in the business, where the fuck did you ever get a figure like 130,000 dollars for what, for what?

DET. LEUCI

No, ya know really, a lot of people are up tight in this case; you know it was a big case.

DET. LAMATTINA and DET. LEUCI enter restaurant

DET. LAMATTINA — Bob (Inaud. 2 sec.)

DET. LEUCI — Who do we got here?

DE STEFANO — Howdy.

DET. LEUCI — How you doing?

DE STEFANO — You want to eat something?

DET. LAMATTINA — (Inaud 3 sec.)

DET. LEUCI — I'll have a cup of tea.

DE STEFANO — Nobody's gonna eat nothing?

DET. LEUCI — No, no.

DET. LAMATTINA — Have a bowl of soup, bowl of soup alright.

DET. LEUCI — Alright o.k. (pause/sec)

Why'd why'd I just tell you what I know.

I don't know nothing about the case or nothing

about the grand jury specifically what

happened or whatever. I have a friend of mine who works in the U.S. Attorney's office, okay and he's interviewing this guy.

DET. LAMATTINA — I'll just have a small wonton, you want a wonton?

DET. LEUCI — Yeah right, fine.

DE STEFANO — I think I'll take some, you have any fried rice, chicken fried rice, make that wet very wet alright, and a coke.

WAITER — Two Wonton small, chicken fried rice....

DE STEFANO — Wet, and a coca cola

DET. LEUCI — (Inaud 3 sec). This guy (Inaud 2 sec) he's kind of a guy like you can talk to this guy, and the guy has alot of faith in him.

tells him the whole story, whats he's gonna do, what they're done up to this point. This guy's involved in the investigation the whole thing, right. So he mentioned a couple of guys in S.I.U. figure I might be involved one way or the other, he told me. Now I got in touch with Nick and a I don't know what a----------

DE STEFANO — Coca Cola. (Inaud 2 sec.)

DET. LEUCI — I really, really don't know what anybody wanted to do, I don't know if anybody wants to do anything, but if anybody wants to do anything with this thing let me know I'll speak to this guy, and I'm sure something

can be done , o k, that's as much about it as I

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know other than the fact that they sent out subpoenas yesterday for all bank records of people who allegedly put money up for this guy Martinez, to show that money was drawn on each of these previous dates, right? And they're trying to get his wife to come in and apparently they got her.

DE STEFANO She did appear, right, she did appear. right?-

DET. LEUCI Ah, I don't think so.

DE STEFANO She did cause (Inaud. 2 sec.) have her.

DET. LEUCI I don't know she may have she been in Grand Jury?

DE STEFANO Yeah

DET. LEUCI In this matter here? He said they trying to get her to really ya know like to do what they want her to do. But apparently you know that's not so much, ya know just that I don't think I don't-------

DE STEFANO What's exactly the story though anything coming down, or something?

DET LEUCI Yeah definitely something coming down.

DE STEFANO Definitely something coming down?

DET. LEUCI Absolutely, definitely

DE STEFANO When?

DET. LEUCI I don't know. Definitely gonna be an indictment

DE STEFANO — On who?

DET. LEUCI — Well, it's not you. I don't know, I don't know who it is you know.

[Dominick Marcone sits at table]

DE STEFANO — Say who it is, just say who it is.

DET. LEUCI — (Inaud.6Sec) You got the guys' name, Nick, you got the guys' name.

DE STEFANO — (Inaudible Sec). Marcone

DET. LEUCI — Marcone,

Dominick Marcone — Marcone

DET. LEUCI — Is that you?

DOMINICK MARCONE — That's my name

DET. LEUCI — That's your name, well (Inaud. 2 sec) they're after Bell, Reed and Martinez that's who they're interested in.

DET. LEUCITTA — Bell, Reid, Martinez

DET. LEUCI — These were the cops in the case.

DOMINICK MARCONE — I don't know, why? I don't know. Do you know?

DET. LEUCI — Yeah I know, I know they're in S.I.U. they're good guys.

DE STEFANO → They're good guys?

DET. LEUCI → I talked to Bell, Bell is a good personal friend of mine, I like Bell, Reed I'm not to crazy about, but from what I'm concerned is these three guys. Now I don't know (inaud. sec). I don't know him I don't know anybody except I know these three guys.

DOMINICK MARCONE — What you do, what (Inaud. 3 sec)

DET. LEUCI — They're hoping to turn the bondsmen; they're hoping to turn the bondsman with an indictment and be able to get these three guys.

DOMINICK MARCONE — That they're hoping to do. How strong is it, they have 'em ?

(Inaud. 2 sec).

DE STEFANO — Strong

DET. LEUCI — (Inaud 3 sec.) They got about 20 statements.

DOMINICK MARCONE — Yeah.

DET. LEUCI — They got the wife's cooperation, the wife is cooperating and they got the bank withdrawals, and they get several other people who also said they gave money. They have (Inaud. 2 sec).

DE STEFANO — But what about what about what about coming down to where they (Inaud. 2 sec). Do you follow what I'm saying?

DET. LEUCI — If you were to ask me specific things, questions you want me to ask, I can ask all these questions. Ask me what you want me to do you know.

DET. LAMATTINA — Bob is very tight with this guy who's handling this case, very tight with him.

DET. LEUCI — And he's not not gonna, he's not a U.S. attorney or anything he's an agent, that's all.

DE STEFANO — (inaud. 3 sec.)

DET. LEUCI — Just got the job (inaud. 2 sec.)

DE STEFANO — Really?

DET. LEUCI — No. (Inaud 4 sec.)

DE STEFANO — This is, you know my answer...

DET. LAMATTINA — If there is any questions that you went asked he'll ask.

MARCONE — The questions are...

DE STEFANO-MARCONE — (Inaudible 13 sec.)

DET. LEUCI — I think - alright, alright, I think Martinez could be convinced that he should be better for him all the way around right, if he just backs off and goes make his cases some place else you know what I mean. Cause that's all he's doing He's looking to make a case to get out from under his thing, that's all.

DOMINICK MARCONE — But you actually think that somebody can talk to him?

DET. LEUCI — Yeah this guy can.

DE STEFANO — (Inaudible) I hear he gives up on everybody (Inaud. 15 sec.)

DET. LEUCI — I can't speak for him, I can't speak for that man either.

MARCONE — I don't know him at all I can just----

MARCONE — (Inaud. 26 sec.) very happy - I wouldn't write another bond on him for a hundred million dollars (inaudible 2 sec.) his wife who had (Inaud 3 sec.) they had some where d... (Inaud 4 sec.)

DET. LEUCI — Well these are, this is the kind of people that talk about (Inaud 10 sec.)

DE STEFANO — And there're gonna try and get the bondsman to turn on these cops.

DET. LEUCI — Yeah.

(Inaud conversation static 5 minutes and 20 sec.)

DET LEUCI — I can find all that out (Inaud 5 Sec.) Photosatatic copies of a subpoena that goes out (Inaud. 3 sec).

DE STEFANO — Do that! Check into that, find this all out

DET. LEUCI — Alright

DE STEFANO — Find out what subpoenas went out.

DET. LEUCI — All right (Inaud. 2 sec.)

DET. LEUCI — Alright, The main interest is the cops;

DE STEFANO — In other words, (Inaud. sec.) bad for the cops

DET. LEUCI — Bad for the cops sure

DE STEFANO — (Inaud 5 Sec.) Federal Court...

DET. LEUCI — Yeah, me neither, because it started off from what I understand, in the Eastern District Strike Force. They made a case.

DE STEFANO — Yeah.

DET. LEUCI — How it wound up in Southern District, I dont' know that,where it is in the Southern District,

DE STEFANO — Now it's in Southern Dis- - -

MARCONE — (Inaud 2 sec.) state case (Inaud 3 sec.)

DET. LEUCI — Yeah, Yeah

DE STEFANO — Why? Why? (Inaud 2 sec.) where was it at?

Det. Leuci — You know why? You're right why would it be a state case? Why? Why?

DE STEFANO — ...how could it be a federal case?

DET. LEUCI — Well, no, the people involved with it could be a federal case, they could make it a federal case if they want to, people coming from across the State to bring the money here, you know.

DE STEFANO — People coming across the state bring money that could make it federal?

DET. LEUCI — Sure, that's federal conspiracy . . .

DE STEFANO — It come down (Inaud. 5 sec.)

Det. Leuci — I don't know, I really don't know.

De Stefano — I can't see how (Inaud. 9 sec.)

Det. Leuci — You bet they got the money (Inaud. 2 sec).

De Stefano — ... the actual crime (inaudible 9 sec.)

Det. Leuci — I'll tell ya, with all the things we're talking about; one thing I'm going to come away from here with I'm going to tell my friend to stay the fuck away from this guy, I mean: (Inaud. 6 sec.)

De Stefano — (Inaud. 2 sec.) he's a wack - (Inaud. 2 Sec.)

Marcone — He's out to set your friend up.

De Stefano — He's out to set your friend up.

Marcone — (Inaud. 16 sec)

Det. Leuci — He said there's a lot of confusion here too, there's two different instances with the same cop, same situations, different defendants you know, he says that this is a, you know not the (inaudible), I don't know, they I'll talk to him.

Marcone — He tried to excape, tried to commit suicide, tried to (inaud. 4 sec.) before he had done that, he tried to commit suicide, he had machine guns in the house. One of the ex wives put it in the house as collateral I put it up out of my own pocket (inaudible 4 sec.) back and forth (inaud. 10 sec.) Now the machine gun. ...

Det. Leuci — Yeah, Yeah, Yeah.

Marcone — Now this is a out growth of that. (Inaud. 7 sec.) like if you don't take him out of jail he'll kill ya. Ya know I mean (Inaud. 16 sec.) he's setting up your friend.

Det. Leuci — Naw, he wouldn't, don't at least, I don't know, I don't know he certainly he doesn't feel that way.

[illegible]ci - Marcone — (Inaud 60 sec.)

[illegible]t. Leuci — Is there anything specific, I'm going to go back, I didn't know you were going to be here today. But I'm gonna go back speak to this guy. Is there anything specific that you want to know or whatever?

MARCONE: (Inaud. 2 sec.)

DE STEFANO: Ask is there definitely an indictment?

DET. LAMATTINA: Find out how much they know.
(INAUD CONVERSATION 31 SEC.)

DET. LEUCI: Like I say there's apparently a lot more to this apparently there was people that someplace in Queens (pause etc.) someplace like in a restaurant that saw a meeting between the cops, come in or something and walked out.

MARCONE: I never in my life, never spoke to him in that way. It doesn't matter, with nobody there. I never spoke to the cops . . . (inaudible).

[DOMINICK MARCONE LEAVES]
(inaudible conversation 63 sec.)

DET. LEUCI: ... and the next day or the day after somebody, who, I don't know yet who right arranged for him to meet this guy.

DE STEFANO: (inaudible sec.)

DET. LEUCI: (inaudible sec.)

DE STEFANO: (inaudible sec.)

DET. LEUCI: Well, whether it was Martinez, his wife, or his brother, they arranged for somebody to sit down with this fellow here, and a figure was given to him but? The figure was $130,000 right. He spoke to him, spoke to Martinez. I carry this bag around to carry my cigarettes in (pause 3 sec.) [illegible] I know. I don't know all the ball players on this team, I don't know all the names, that's another thing I should get.

DE STEFANO: Why a lot of people involved?

DET. LEUCI: A lot of names; apparently, a lot of people involved.

DET. LEUCI: There's a cop, a bondsman and a private detective.

DE STEFANO: (Inaudible 6 sec.) private detective
(pause 2 sec.)

DET. LEUCI: I don't know. I'm coming to you now to ask, tell me what you want me to find out. I'll find out.

(Inaudible conversation 45 sec.)

DET. LAMATTINA: He told me a lot of things, told me a lot of things.

DET. LEUCI: O.K. good.

DET. LAMATTINA: But I'll tell ya, this whole thing with Rosner.

DE STEFANO: No this is important too.

DET. LAMATTINA: Now that's another issue lets get one thing, straight, hah. (inaud. 3 sec.)

DE STEFANO: (Inaud. 2 sec.) is there a lawyer involved in that too?

DET. LEUCI: I don't think so.

DE STEFANO: A lawyer named in the case.

DET. LEUCI: No, I'm not sure - - - but I can ah-h I don't know anything about this. All I'm looking to find out if people were willing to sit down and listen to this, if they want to do something. Cause I don't know anything believe me (inaudible 2 sec.)

DE STEFANO: Whatever you do, tell him he'll be taken care of.

DET. LAMATTINA: (inaudible 4 sec.)

DE STEFANO: (inaudible 6 sec.)

DET. LAMATTINA: (inaud. 12 sec.) to show 130,000 (inaud. 5 sec.)

DET. LEUCI: They got something to show they got bank records to show that.

DE STEFANO: They got bank records? (inaudible 9 sec.)

DET. LEUCI: Different banks 5 or 6 banks. They're sending out subpoena's today to all the banks. (Pause 2 sec.)

DE STEFANO: (inaudible 3 sec.) Safe deposit box.

DET. LAMATTINA: Wasn't there a mention about a meeting or something?

DET. LEUCI: There was a meeting some place.

DE STEFANO: Where?

DET. LEUCI: Queens, Part one, in the Part One, I don't know the cops, the cops walked in. I'm not even sure who was at the meeting; they got like an O.K. signal. That's all there was.

DET. LAMATTINA: When did they first mention it?

DE STEFANO: When did they first talk about it - find out?

DET. LEUCI: . . . I don't know which one it is, I don't know know either. (pause 4 sec.) How come they didn't lock anybody up?

(Inaud. 5 sec.)

You know what the fuck.

DE STEFANO: The only ones they're talking about is Reed, Bell, and Martinez right.

DET. LEUCI: If he was in jail, if he was in jail that day they met him that day.

DE STEFANO: When did he make that phone call?

DET. LEUCI: Right after he got locked up.

DET. LEUCI: He must have been going back to Court.

DE STEFANO: Meeting in Part One?

DET. LEUCI: In the Part One right.

DET. LAMATTINA: Is that a restaurant?

DET. LEUCI: It's a restaurant across the street from Queens Court. Bar, restaurant, Bar. All right you know.

DE STEFANO: Directly, across the street from Morty's.

DET. LEUCI: Directly across the street from ahh.

DE STEFANO: Directly across the street from Morty's - the coffee shop.

DET. LEUCI: Yeah, Yeah right.

DE STEFANO: Coffee Shop, Bondsman on the same side.

DET. LEUCI: (Inaud. 3 sec.)

DE STEFANO: That's Morty's place too.

DET. LEUCI: I don't know, it's got a piano.

DE STEFANO: That's all there is right?
(Inaudible 5 sec.)

DET. LEUCI: That's the only actual contact that he can swear to, took place between the cops and the people that are involved in, the intermediary (inaud. 2 sec.) the money from the . . .

DE STEFANO: (Inaud. 1 sec.)

DET. LEUCI: No, I don't know that, I don't know, I don't know anything about where (inaud. 1 sec.) See (inaudible) anybody together. They didn't even like to speak to each other. Like the cops walked in, they got some kind of signal from the people sitting down, they signalled back "yes," and they walked out.

DET. LAMATTINA: (Inaud. 2 sec.) down where?

DET. LEUCI: Not only that, they found it was in his (Inaud. 2 sec.)

DE STEFANO: In Morty's?

DET. LEUCI: No, in Carl Doe, and I talked to a lot about this to other guy you know, and I, I can't remember all the specifics, but I mind-boned things I remember.

DE STEFANO: Now, they're hot on, who they hot on now?

DET. LEUCI: They're hot on, the (inaud. 2 sec.) that's what it came down to. They want the three guys they got, another one, Bell, Martinez and Reed. Just those three, right?

DE STEFANO: There's supposed to be a private eye?

DET. LEUCI: There's supposed to be a private detective involved as an intermediary.

DE STEFANO: They want him too?

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DET. LEUCI: They ain't got nothing on him; but they got another situation with another allegation mentioning this guy.

DE STEFANO: Who?

DET. LEUCI: This private detective, same bondsman, same cops, in another situation. But, just that they got nothing on him they just the allegation, so the whole like thing fits, but you know that's what happened. (inaud. 3 sec.)

DE STEFANO: Who turned that one over Internal Affairs?

DET. LEUCI: Internal Affairs turned that one over.

DE STEFANO: You know who that is don't you?

DET. LAMATTINA: (Inaud. 6 sec.)

DET. LEUCI: I don't know, then they got another allegation, this fucking guy, Cusi-caca (inaud. 3 sec.) Now I know of Cusi-caca. I don't know if you ever heard of this guy.

DE STEFANO: Yeah go ahead.

DET. LEUCI: That's another thing this guy says that

DE STEFANO: Say what?

DET. LEUCI: Martinez, Martinez is saying Cusi-caca is saying ... Oh man,

Martinez is saying that Cusi-caca (inaudible 3 sec.) I don't know anything same people with this guy Martinez is saying he knows this guy did this cause they went to Cusi-caca too, to get money.

DE STEFANO: What's Cusi-caca got to do with these other people?

DET. LEUCI: That he got the money that they made the score from -- you know that's what you know. (Inaud. 3 sec.)

DE STEFANO: But, they want Nickie, and they want what's his name? Dowgie? ahh

DET. LEUCI: And Martinez.

DE STEFANO: They want them bad, Hah!

DET. LEUCI: They want them, you know why they want them bad, 'cause there was junk there - it came back no narcotics.

DE STEFANO: Who said that?

DET. LEUCI: Martinez, 6 keys of stuff came back no narcotics.

DE STEFANO: That's a lie.

DET. LAMATTINA: He had that much?

DET. LEUCI: Six keys.

DE STEFANO: That's a lie (inaudible 2 sec.)

DET. LEUCI: They believe it, they believe the junk was switched, they believe it.

DE STEFANO: Weren't the Feds in there?

DET. LEUCI: They say that the Feds were there and that stool (Inaud. 4 sec.) get all the truth out of him, the feds have to be involved in this thing.

DE STEFANO: That's right (Inaud. 4 sec.) the feds (Inaud.4 sec.) follow what I mean?

[illegible] though [illegible] me, everything can be bullshit but you got one there there is true believable, you know that's the thing that fucks them up.

DE STEFANO: (Inaud. 3 sec.) investigated because of this things that happened once before.

DET. LEUCI: Yeah.

DE STEFANO: What was that all about?

DET. LEUCI: I don't know, they just started a new office over there in the U.S. Attorney's office maybe even (Inaud. 3 sec.)

DE STEFANO: (Inaud. 5 sec.)

DET. LEUCI: They spoke to him.

DE STEFANO: They holding him down or what?

DET. LEUCI: I don't know.

DE STEFANO: They putting pressure on this guy?

DET. LEUCI: I don't know, his name never even came up. He should get out, he's a sweet guy.

DE STEFANO: I know (Inaud. 6 sec.)

DET. LEUCI: Yeah, that's bullshit, nothing to (Inaud. 3 sec.)

DE STEFANO: (Inaud. 3 sec.)

DET. LEUCI: Nothing to do with this allegation.

DE STEFANO: (Inaud. 3 sec.)

DET. LEUCI: It may have.

DE STEFANO: Before the Grand Jury now.

DET. LEUCI: He's gone before the Grand Jury about the case; or what even happens no questions were asked of him as far as indictments or anything like that.

DE STEFANO: No, they were.

DET. LEUCI: That's not true, I'll find out, I'll find hey, I'll find out for sure, I bet that's not true because ...

DE STEFANO: (Inaudible sec.).

DET. LEUCI: [illegible] know he's being indicted, right? They indict this guy and he's making some kind of a [illegible] at that time they already had him [illegible] they got [illegible] near this guy you know.

DE STEFANO: (Inaud. 6 sec.)

DET. LEUCI: Alright -- Alright but the point is that they don't know that.

DET. LAMATTINA: (Inaud. 3 sec.)

DE STEFANO: That's right.

DET. LEUCI: That don't mean nothing.

DE STEFANO: (Inaudible 2 sec.) I know they offer (Inaud. 2 sec.) must be worried too.

DET. LAMATTINA: I know.

DE STEFANO: Pepe feels he's the one who gave him the money (Inaud. 3 sec.) trouble later on.

DET. LEUCI: He seems like a sweet guy.

DE STEFANO: Huh?

DET. LEUCI: He seems like a very sweet guy but I wouldn't want to be under the gun with this guy. I don't think, I don't know, I shouldn't say that.

DE STEFANO: I told you that a long time ago, right.

DET. LAMATTINA: Yeah, I know.

DE STEFANO: As far as I'm concerned (Inaud. 3 sec.)

DET. LEUCI: Ya know, I never went, you know its a strange, strange thing cause me and this guy spoke about a lot of things with this guy and never told me where he was working, ya know, I'd tell, you know once twice (Inaud. 3 sec.) and he would tell me, alright, tell me, you know, not what he was supposed to tell me right?
Alright, one situation came up quite a while ago where he really told me something very nice about a very nice guy downtown, he saved the guy. (Inaudible 10 sec.) The guy really picks his spots. The guy I'm sure he's a good guy (Inaud. 3 sec.) I've got nothing to worry about. So...

[illegible]: (Inaudible 5 sec.).

[illegible]: I don't know what it is, what he feels about Jerome. (Inaud. 4 sec.)

DE STEFANO: (Inaud. 5 sec.)

DET. LEUCI: I don't know.

DE STEFANO: (Inaud. 1 sec.)

DET. LEUCI: Yeah I would imagine something like that...

DE STEFANO: (Inaud. 4 sec.) He's dead, he's dead.

DET. LEUCI: You know, personally you're right. I would feel like ab-

[illegible]: You feel like a pig.

DET. LEUCI: That's right, right absolutely I wouldn't do it personally, (Inaud.1 sec.) the way I would do it you want do the right thing, then you do the right, you know and somebody (Inaud. 2 sec.).

DE STEFANO: (Inaud. 3 sec.)

DET. LEUCI: The worse thing you can do I'think personally.

DE STEFANO: Really!

DET. LEUCI: You're right.

DE STEFANO: (Inaud. 4 sec.)

DET. LEUCI: (Inaud. 3 secs.) He says they got a, if they want a (Inaud. 2 sec.) forget (Inaud. 2 sec.) but that's not the deal.

DE STEFANO: Tell me straight; you could talk to me straight. right (Inaud. 5 sec.)

DET. LEUCI: No, no as a matter of fact I even told Nick yesterday ya know.

DE STEFANO: Then I could make a fuckin score.

DET. LEUCI: What happens if he gets indicted?

DE STEFANO: Well that's it.

DET. LEUCI: Well, if he gets indicted and later on something comes up (Inaud. 3 sec.) he's gonna get indicted. No doubt about it.

You know what I got against him? He walks in that office with Martinez a good guy.

You know Carl Aguiles?

De Stefano — Yeah.

Det. Leuci — Ok, he goes over to Aguiles and tells him you're indicted.

Det. Lamanttina — Your kidding?

Det. Leuci — I got it straight from -- your indicted, You tell a guy, you know, hey I wouldn't tell somebody if I knew for sure tomorrow Nick that you were going to be indicted, you know, somebody better show me that fucken paper or else I ain't telling you. Cause the same thing with this (In and 2 sec) you know, and for what ...

De Stefano — (Inaud 5 sec.)

Det. Leuci — Ha. Let me find out ...

De Stefano — Find out.

Det. Leuci — If you're really that interested

Det Leuci — .. Really I'll get it.

Det. Leuci — (Inaud. 2 sec.) I'd like to see this guy get ...

De Stefano — Right ...

Det Leuci — Something you know

Det. Leuci — And (Inaud. 2 sec.) after that I'd like to see something nice done for this guy cause in the future (Inaud 6 sec.) all kinds of good things.

De Stefano — You're going to vouch for this guy (Inaud 3 Sec.)

Det. Leuci — Listen let me tell you something, you know I don't like to , I don't, I very rarely vouch for anybody.

De Stefano — (Inaud 5 Sec.)

Det. Leuci — Look I don't know what it is. You tell me what you wanna know if I can get it,

maybe I can. I believe - first of all I really don't know how he'll react (inaud 2 Sec.) - he may go nuts, I think, he'll do it. (Inaud 3 Sec.)

De Stefano — (Inaud 5 Sec.)

Det. Leuci — Look, I know like I say, I mean if he could do it, if he has a mind to do it, he'll do it, but he wouldn't do it without asking anybody unless they asked him.

De Stefano — (Inaud. 4 Sec.) check it out.

Det. Leuci — Yeah something like that I'm sure he would do it.

De Stefano — Nothing where he would have to be involved.

Det. Leuci — He said the same thing.

De Stefano — (Inaud 3 Sec.) find out it it's the same thing.

Det. Leuci — I'm sure he would if he can do it no doubt about it.

De Stefano — What do you think I should do here hah?

Det Leuci — I'd like to see something worked out with Nick, ya know.

De Stefano — There's other things.

Det. Leuci — Oh, I'd like to see something else to tell you the truth. Look see what happens if you run into him drop this on him, it can't hurt right.

De Stefano — No. I don't want you to drop this on him. I don't want that dropped either how can you do that I don't want to get involved with this cock sucker (Inaud 6 Sec.) why should they get credit. Right or wrong am I wrong?

Det. Leuci — No. You're right.

De Stefano — I don't care. When the time comes he'll do it and don't worry about that. No, no really.

De Stefano — What I want to find out about (Inaud 3 Sec.)

Det. Leuci — I think I know what your talking about. You mentioned the name before, you're talking about Rosner.

De Stefano — Yeah.

Det. Leuci — Alright, you mentioned it before.

De Stefano — What did I do?

Det. Leuci — You mentioned, you mentioned the guy's name before if you want, ya know like that I can alright, whatever you want to know about it you know.

De Stefano — (Inaud 2 Sec.) what they got besides the four guys that they got or how many of these guys they really have.

Det. Leuci — Alright I can find out.

De Stefano — You want the names?

Det. Leuci — No.

De Stefano — You don't need names.

Det. Leuci — No, I don't want no names.

De Stefano — You don't want no names.

Det. Leuci — I find out, I'll find out were there any more than four witnesses they got now.

De Stefano — Right.

Det. Leuci — and if they got, if they really, are, you know really got any these four ____ ____ ____

De Stefano — How really tight is the case?

Det. Leuci — How really tight is the case.

De Stefano — We hear it's weak (Inaud. 4 sec.) want to know.

Det. Leuci — Sure.

De Stefano — Think you can find this out right away? This will be something right now, right now, right now!

Det. Leuci — I'll [illegible] to this guy tonight you have to - , he has to go to his office ya know.

De Stefano — ... tomorrow ...

De Stefano — (Inaud. 2 Sec.)

Det. Leuci — Tomorrow night.

De Stefano — Tell me what you want and I'll talk to him.

Det. Leuci — Everybody knows Marcone, Everybody knows about that guy.

De Stefano — I'll talk to him.

Det. Leuci — He mentioned he mentioned that.

De Stefano — Him and I you know are alright (Inaud. Conversation 3 Sec.)

Det. Leuci — It's up to you.

Det. Lamattina — Oh I'm off tomorrow.

De Stefano — Why don't we make that for the (Inaud 2 Sec.) tomorrow tomorrow night, you want to do that Bob?

Det Lamattina — (Inaud 3 Sec.) We'll all meet tomorrow in Brooklyn.

Det. Leuci — During the day?

De Stefano — Nickie, if you meet with Nickie make sure he gets a hold of you tomorrow, don't fuck around (inaudible sec)

Det. Leuci — ... It's up to you ...

De Stefano — You know ...

Det. Lamattina — You be able to find out what Beltran was asked by tomorrow night ...

Det. Leuci — I'll go see the guy tonight.

De Stefano — You know why? I'm involved.

Det. Leuci — Lets get this straight

De Stefano — ... now you know. OK.

Det. Leuci — Alright alright ------

Det. Lamattina — Quick Quick you gotta see the guy tonight. You gotta go to the office tomorrow.

Det. Leuci — Tomorrow -

Det. Lamattina — You wont be able to see me till tomorrow evening or afternoon.

Det. Leuci — He may know off the top of his head, ya know he may ...

Det. Lamattina — Let him check ...

De Stefano — He may but let him do for me you know

Det. Lamattina — No let him do ----

Det. Leuci — Alright.

Det. Lamattina — What number will you be at, till say seven o'clock.

De Stefano — An I'll be there.

Det. Leuci — Alright.

Det. Lamattina — Nice, quiet place where nobody ...

De Stefano — And I'll have, I'll have Rosner there too. Alright?

Rosners a thousand percent don't let anybody tell you any different. He is a thousand percent down to earth guy. Now I'm not talking about ---

Det Leuci — The only thing with him ...

De Stefano — Now I'm talking about the money, I'm talking about money.

Det. Leuci — I don't care about the money money is there.

De Stefano — Now I'm talking about something else. A thousand percent down the line. We went through a lot together, a thousand percent

Det. Leuci — I'll tell you what I know about him, I don't like him.

De Stefano — The man is a thousand, you know why nobody likes him?

DE STEFANO — Something else I wanted to ask you. Is what (Inaud 5 sec.)

DET. LEUCI — (Inaud 2 sec.) Hard to get. . .

DE STEFANO — But, I know it's done, I know its done by a lot of people.

DET. LEUCI — (Inaud 5 sec.) he's the kind of guy, from what I know of him, he really picks, he's not gonna be the kind of guy like, today, tomorrow next day.

DE STEFANO — (Inaud 5 sec.) Then I'll guarantee he'll make a score.

(Static inaudible conversation 35 sec)

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DET. LEUCI . . . Martinez doesn't know the intermediary because if -- Martinez knows the intermediary

DE STEFANO But he does . . .

DET. LEUCI . . . puts everybody together you know. I catch you talking to him you know you got it. He puts everybody in, that's it.

DE STEFANO In other words the investigator's got a problem. Eventually that would happen.

DET. LEUCI You know, I don't know how it -- if he doesn't know what he is doing, you know the investigator. You're the investigator, right! Right.

DE STEFANO There's no such thing as problems. . .

DET. LEUCI Alright (Inaud. 3 sec.)

DE STEFANO Am I wrong or am I right, you tell me? (Inaud 5 sec.)

DET. LEUCI What if, what if you let me ask you something what if tomorrow - - - - - - - - -

DE STEFANO No Sir, no problems, no problems.

DET. LEUCI Nickie, hey Nickie what I gotta do.

DE STEFANO Don't you remember (Inaud. 2 sec.) Nobody's better than him.

DET. LEUCI Are you involved in this fucking thing too?

DE STEFANO He happens to be, he's a very good friend of mine.

DET. LEUCI Ha, Ha, Why?

DET. LAMATTINA Honest- he told me about it.

DE STEFANO — In other words Bell (Inaud. 3 sec.)

DET. LEUCI — I don't think Bell'd turn. I think Bell would give himself up. I mean that's the kind of - you know like he's (pause) gone his fucken mind.

DET. LAMATTINA — (Inaud 2 sec.) they're partners.

DET. LEUCI — Oh, I don't know I don't know, them fucking guys.

DE STEFANO — Reed, you know he's sharp, fucken Reed. . .

DET. LAMATTINA — He's too sharp. . .

DET. LEUCI — I don't know, I don't know I wouldn't vouch for him, I would never do you know personally I would never do but I wouldn't want to be in a fucken jackpot with him, let me tell you.

DE STEFANO — (Inaudible 6 Sec.)

DET. LAMATTINA — It was knocked out.

DET. LEUCI — Well (Inaud 3 Sec.) $130,000 they got the fucken bank books to show it.

DE STEFANO — Problem there is, how much could it be? (Inaud. 3 Sec.)

DET. LEUCI — Martinez testifies, right: "I'm afraid, I don't know that." No that's, there's no more case.

DE STEFANO — They'll work with these guys they'll come out with it the guy's a fucken stool rat. How could you deal with a fucken rat?

DET. LEUCI — Yeah.

DE STEFANO — Fucker might fall.

DET. LEUCI — I agree with you. No you're right.

DE STEFANO — Show me the way.

DET. LEUCI — You know what happens, I think a guy sits down with a guy for a month, two months, three months, he gets to feel like, apparently, that's the way this guy feels. He

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DET. LEUCI (Cont.) feels that Martinez thinks he's, first of all he knows a lot of people Martinez knows, he worked in Miami this guy so I mean like, Martinez puts a lot of faith in him. He's got him on the point like you do what I tell you to do, don't listen to the guys there all looking to hurt you, you know listen to me, he's up to the point now he tells him something he does it. He really believes that I said you got to be much more sure than just believing it personally you know.

DE STEFANO He could get hurt.

DET. LEUCI Hurt. You'll never get hurt. Never happen, you know he'll never know (pause 2 sec.) Can Rosner (Inaud.| Sec.) up on the other thing?

DET. LAMATTINA What?

DE STEFANO How we gonna leave the other thing?

DET. LEUCI You want to know, I'll find out as much let me tell you like this, I'll find out, I'll write it down.

DE STEFANO Let me tell you this, let me straighten out everything, just don't be adding (Inaud. 3 Sec.).

DET. LEUCI No Hey, I wouldn't do that.

DE STEFANO Know what I mean. You know that (Inaud. 5 Sec.) promise.

DET. LEUCI No, Hey I won't do that. No you kidding.

DE STEFANO What I heard was (Int really was just that's what I heard. How the investigator. (Inaud. 3 Sec.) when I asked you before you said they didn't have anything on him.

DET. LEUCI No, but it came up.

DE STEFANO But they had nothing on him.

DET. LEUCI No, but he's not being indicted, not being indicted.
If anybody's getting indicted the only guy is him.

DE STEFANO Marcone (Inaud. 5 sec.) he's main man, Marcone nobody else getting indicted?
(Inaud. 5 sec.).

DET. LEUCI — I don't know nothing?

DE STEFANO — (Inaud. 2 Sec.) Hah?

DET. LEUCI — Well that's you know I think thats their best shot.

DE STEFANO — The only one (Inaud. sec.) I know this Detective (Inaud 3 sec.) talk about him.

DET. LAMATTINA — Pipe down.

DE STEFANO — You know who (Inaud 5 sec.) ask him if (Inaud 18 sec.) follow me Bob?

DET. LEUCI — Yeah.

DE STEFANO — You know who I thought he was, I thought he was the other guy that was there . . .

DET. LEUCI: Six o'clock or something.

DE STEFANO: Where? (inaud. 30 sec.)

DET. LEUCI: I can go anywhere. (inaud. 14 sec.)

DET. LAMATTINA: Yeah, but they don't open till seven o'clock (pause 3 sec.).

DE STEFANO: Why don't we make it the Royal Pub on Claraton Rd. I know where it is, Claraton Rd. on Flatbush Ave.

DET. LEUCI: Claraton and Flatbush?

DE STEFANO: Yeah, the Royal Pub now (inaud. 1 sec.) one block away from Claraton.

DET. LEUCI: Yeah, the Royal Pub,OK.

DE STEFANO: Alright.

DET. LEUCI: I'll find it, no problem.

DE STEFANO: You'll definitely take care of that for me?

DET. LEUCI: (Inaud. 3 sec.)

DE STEFANO: Now, what about Julio?

DET. LEUCI: Who?

DE STEFANO: What about Julio. Tomorrow.

DET. LEUCI: Alright.

DE STEFANO I got to know about - - -

DET. LEUCI: No, no, don't, like I say there's no figure given to me you know. (inaud 3 sec.)

De Stefano	You know what I'm talking about (Inaud 3 sec.)
Det. Lamattina	You'll get all the information for me.
Det. Leuci	Yeah like that you know like, believe me if I ...
De Stefano	Would you give me that figure tomorrow?
Det. Leuci	Right, yeah like there's no ...
De Stefano	This way, I gotta get this fucking Rosner to come up with the money. So you tell me, and I'll let you know off hand tomorrow night.
Det. Leuci	No, I wouldn't do that, I wouldn't, because, there's first of all (Inaud. 2 sec.) like he says, a nice guy and everything (Inaud. 6 sec.) make some kind of crazy figures (Inaudible 3 sec.).
Det. Lamattina	You gotta go, you gotta see this guy tonight or tomorrow blah, blah, blah, you can work something out. Before the information is given, tell him what the man says, what's he gonna do.
De Stefano	(Inaud 4 sec.) tell him the whole story (Inaud. 2 sec.)
Det. Leuci	Yeah.
De Stefano	If he's not ...
Det. Leuci	Alright.
De Stefano	Come back tell us if he can definitely guarantee [illegible] I mean or right?
Det. Leuci	Right.
De Stefano	Then give us what figure you want.
Det. Leuci	Right.
De Stefano	Don't let me hear (Inaud. 3 sec.)
Det. Leuci	(Inaud. 4 sec.)
De Stefano	(Inaudible 3 sec.) I don't know him. I don't want to hear nothing about him.
Det. Leuci	Yeah, alright.
De Stefano	You follow, I don't know him I don't want to hear nothing about him. He comes in, I don't know nothing about it. Do you understand?
Det. Leuci	OK.

De Stefano (Inaud. 5 sec.)

Det. Leuci OK, alright.

De Stefano Maybe we won't have it tomorrow, but we'll have it. (Inaud. 5 sec.)

Det. Leuci I know what you mean.

De Stefano Am I wrong?

Det. Leuci Your right, from what you say you're right.

(Inaudible conversation 22 sec.)

Det. Leuci Yeah I spoke to them, you know I spoke to Bell and I spoke to Reed. I didn't tell you that I spoke to Doug. Like, I told him everything is gonna be alright, maybe I, shouldn't maybe I shouldn't cause I think as far as he's concerned everything is going to be alright. (Inaudible 2 sec.)

De Stefano Right (Inaudible 2 sec.)

Det. Leuci Oh, they're interested.

Det. Lamattina That's for sure.

De Stefano (Inaud. 6 sec.) Why you got no money?

Det. Lamattina Who (Inaud. 10 sec.)

De Stefano You know you got a lot of things to do

[illegible] You ain't, you ain't kidding.

De Stefano I hope you remember em.

Det. Leuci I'll remember them.

De Stefano One thing, the most important thing.

Det. Leuci The most important apparently the most important thing is ...

De Stefano Right now, Rosner, that's the most important, right now, that's the most important thing now.

Det. Leuci Alright, and you want to have him there tomorrow night?

De Stefano Well, I don't particularly [illegible] don't want him there, we won't have him there. He's alright, he is, (Inaud. 2 sec.) he's no problem he's alright.

Det. Leuci	You're sure huh, no problem.
De Stefano	Would we tell you (Inaud 2 sec.)
Det. Leuci	I don't like lawyers.
De Stefano	Hah?
Det. Leuci	I don't like lawyers, I don'ke like bondsman.
Det. Lamattina	No, he's a good guy.
Det. Leuci	(Inaud 4 Sec.) a good guy -- you're a bondsman or are you. I don't know, I don't know what you are. What ya.
Det. Leuci	Give me a good wise guy any day. He knows, he knows, he believes, see these other guys they don't believe. Then you can't make believers out of them till you know you gotta clip them, then it's too late.
Det. Lamattina	(Inaud. 4 sec.)
Det. Leuci	On the other side, I park
Det. Lamattina	(Inaud. 9 sec.)
Det. Leuci	Alright, let's find out huh let find out, I don't want to promise you.
De Stefano	You should have no problems.
Det. Leuci	That's right.
[illegible]	[illegible].
[illegible]	Yeah.
[illegible]	(Inaud. 3 sec.)
Det. Leuci	Yeah I'll be there, six you know there's a lot of traffic, yeah six o'clock make it.
De Stefano	You'll definitely be there?
Det. Leuci	Yeah I'll be there, just hope I can remember everything.

Det. Leuci — Alright.

Det. Lamattina — (Inaud. 14 sec.) (pause 23 sec.)

Det. Leuci — Hey fuck you, fuck that, personally the way I feel, you know, you don't do nothing. Say like, if I did talk to anybody, I gotta know the guy like practically forever. He talks about Rosner. I don't dig that fucken guy...

Det. Lamattina — He's a nice guy (Inaud. 6 sec.) Dark off in the Court. He makes a fucken ass outta you, that's why a lot of guys don't like him but as far as lawyers are concerned (Inaudible 5 sec.)

Det. Lamattina — The lawyer is a real good guy...

Det. Leuci — Yeah, alright well.

Det. Lamattina — (Inaud 1 sec.)

Det. Leuci — Yeah thats something, all I gotta do is speak to the guy.

Transcription of Conversation Recorded on October 12, 1971, Between Detective Robert Leuci and Nicholas De Stefano at the Dayton Restaurant, 454 Broadway, New York, New York
(Tape 1012B)

GOVERNMENT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
GX 26a id.

DET. LEUCI: Hey, come on. Will you guys stop this shit now. Nickie. You guys are fuckin crazy, what is this grand jury minutes. Hey listen don't you ever fuck me around. Now.

DE STEFANO: Who?

DET. LEUCI: Thanks for fucking me around. I really mean it. Enough of this shit.

DE STEFANO: Tell me the truth, do you think . . .

DET. LEUCI: No.

DE STEFANO: Do you think anybody would fuck you around?

DET. LEUCI: Yea yeah!

DE STEFANO: Who?

DET. LEUCI: That fucking jew

DE STEFANO: I want to know one thing, what about the Grand Jury minutes? I need those fucking Grand Jury minutes.

DET. LEUCI: Grand Jury minutes on who?

DE STEFANO: On the other case (Inaudible 6 Sec.)

DET. LEUCI: He wants them Grand Jury minutes, whatever we agree to now, he's going to double it.

DE STEFANO: Jesus Christ.

DET. LEUCI: And I'm telling you. You know, I don't know, I don't know if the guy can get it. I can't promise you. I don't know anything about it.

DE STEFANO: He thinks we're going to get them.

DET. LEUCI: He thinks my ass. We never even talked about that.

DE STEFANO: We did, you talked about them.

DET. LEUCI: Horse shit.

DESTEFANO: OK, maybe a little different yeah. We talked while we were eating, when he came in, after he came in.

DET. LEUCI: He's out of his fucking mind this guy is.

DE STEFANO: Nickie was there Nickie he'll tell ya.

DET. LEUCI: He's got that whole fuckin case. I spoke to the guy, there's no other witnesses, that's it. They're speaking to some guy now for a subsequent thing something that happened after the case for the same type of thing. The guy hasn't turned, they are trying to turn the guy. The guy's not saying anything, and he don't ever know who the guy is, he probably can find out if the guy turns he'll find out, but they're talking to some guy now hoping to show you know some subsequent situation - where it was similar you know but other than that, that's the whole fuckin case. That whole "1300" material, that was it.

DET. LEUCI: I did my part. I mean I did everything. He did everything (laughs) He winks this fucking guy.

DE STEFANO: What about

DET. LEUCI: Fuck that, not for that figure.

DE STEFANO: (Laughs) the "G J", "G J", Heh.

DET. LEUCI: Now your here now your fat your sitting back and you figure nobody got ahh (pause 2 sec.)

DET. LEUCI: No, no class

DE STEFANO: No. No. Seriously Bob, hey look.. Oh no really come on.

DET. LEUCI: What a bunch of fucking shake down guys, you guys, are. I really mean it.

DE STEFANO: Oh. Now we are shake down guys, shake down guys, we're all shake down guys. Why we shake down guys?

DET. LEUCI: He's says to me"1300" material, right?

DE STEFANO: 3500. that was 1300 or 3500?

DET. LEUCI: Alright. I don't know whatever it was.

DE STEFANO: (Inaud. 6 sec.)

DET. LEUCI: Hey, he wanted to find out number one. He wanted to know why if that meeting in Florida was before or after right. He wanted the 1300 material, that's all the 1300 material there is, and he wanted the Marcone thing the indictment right, he didn't want that, but he wanted it . . .

DE STEFANO: . . . I wanted, I wanted Marcone. You did me a favor over there. I can't get you no money off this guy.

DE STEFANO: I don't want no money from Marcone. I don't wnat to get that much involved in it. I'm on the border line, I want to stay on the border line, ya know.

DET. LEUCI: Don't get involved. Don't get involved in that.

DE STEFANO: Right or wrong (pause 2 Sec.)

DET. LEUCI: Absolutely about if you're my brother. I'd tell ya. I don't give a fuck what the situation is, have nothing to do with Marcone.

DE STEFANO: Right.

DET. LEUCI: And I mean nothing I don't care what it is.

DE STEFANO: Right.

DET. LEUCI: Till now.

DE STEFANO: Do they really feel that they could talk to him?

DET. LEUCI: You got that money today?

DE STEFANO: Who? Am I supposed to have money for you?

DET. LEUCI: Yes.

DE STEFANO: Do you think I would have money for you?

DET. LEUCI: No. No, No.

DE STEFANO: No, I want to know. Do you think I would have it? No, you don't think I do. You don't right?

DET. LEUCI: No, I don't doubt it.

DE STEFANO: (Inaud. 4 sec.) Ah, come on seriously, Bob, come on, hey Bob you ain't . . .

DET. LEUCI: You guys are tough fucking bunch. I ain't never met a crew of fucking guys, slicker bunch. No wonder you guys are always in fucking trouble, you . . .

DE STEFANO: Who?

DET. LEUCI: You got more fucking enemies that anybody else you guys.

DE STEFANO: (Inaud. 2 sec.) Laughs.

Destefano: Now let's get back to the fina[illegible] aspect overhere, Bobby. Alright, now what about the, are of our deals, the "G.I.'s"?

Det. Leuci: You asking me something I can't answer. I really can't I mean if I was to just tell you a yeah, I could get it tomorrow, you know, I can't answer. I got to speak to the guy, apparently you know they're there, but you know he gotta do these photostat (laughs) It must be like a fucking book.

Det. Leuci: How's he gonna get it? I don't know how's he's gonna do it. You know but...

Destefano: Can't be that much, can't be that much.

Det. Leuci: All right you tell this fucking guy, you tell him you, tell me what you think. You tell him its an additional two for that...

Destefano: Forget about it.

Det. Leuci: He ain't going to go for it.

DeStefano: ...No, he's gonna think you wanna shake him down,

Det. Leuci: Nothing additional at all I mean not even another fucken half a yard or something. What is he like this guy?

DeStefano: Na.

Det. Leuci: Alright, some day.

DeStefano: You see this guy is a hard guy to do business with if there was another guy involved with this it would be different...

Det. Leuci: ...Hey what does he think I mean - ah, I'm his fucken brother or what is it?

DeStefano: Na, Bob give me a pen for a minute (pause 8 Sec.) (DeStefano writes on piece of paper)

Det. Leuci: Here we go again with this pen. (pause 1 sec.)

DeStefano: Alright?

Det. Leuci: Yeah.

DeStefano: Right.

Det. Leuci: Yeah you know you confuse me. Ya know (inaudible sec.) four hundred ya know form.

DeStefano: One right - did you get a yard?

Det. Leuci: Yes Yeah, Okay.

DeStefano: Nickie a yard, that's six.

Det. Leuci: OK.

Destefano: What do we owe you now?

Det. Leuci: Nineteen.

DeStefano: Nineteen. I owe you nineteen: That's what we owe you? Hah, that's what we owe you (inaudible sec.) nineteen

Det. Leuci: No. To wait a minute (laughts) No, no, no.

DeStefano: (Inaudible 10 sec.) Now nineteen.

Det. Leuci: Nineteen, that's it

DeStefano: Twenty five hundred, right?

Det. Leuci: (Inaudible 1 sec.)

DeStefano: (Inaudible 1 sec.) Are you gonna get me those "G.J."? (pause 1 sec.) papers.

Det. Leuci: If there's any way possible. I'll get em.

DeStefano: Hah?

Det. Leuci: If he can get em he'll get em, I mean I told you you know if it's there he'll get it.

DeStefano: (pause 4 sec.) Alright when am I going to see you again, tomorrow night?

Det. Leuci: Yeah, you'll drive me nuts. Your want to see me again tomorrow?

DeStefano: I wanna give you the balance of the money tomorrow, right.

Det. Leuci: (laughs)

DeStefano: I want to see you tomorrow night, yeh and I want you to have those things for me.

Det. Leuci: You guys. (pause 2 sec.) what's tomorrow Wednesday, alright.

DeStefano: (Pause 4 sec.) Happy? I got something here. Not much but something (inaudible 8 sec.)

Det. Leuci: Good deal. -- Put it in the cigarettes. [Det. Leuci hands DeStefano empty package of cigarettes]

DeStefano: How many you got in there?

Det. Leuci: Just hand it to me, big fucking deal.

DeStefano: (pause 3 sec.) Here you go. [DeStefano at this point physically hands empty package of cigarettes to Det. Leuci which contained $1150.]

Det. Leuci: What's here?

DeStefano: Eleven and a half. (pause 4 sec.)

Det. Leuci: Seventeen and a half that's, You owe me eight.

Destefano: What? Boy you're pretty fast. Howe much you say? You ain't right, you ain't right. I gave you eleven and a half I owe you 750

Det. Leuci: 750

DeStefano: Now, I'll tell you something else. Out of that four hundred really I didn't add that much, I didn't give you nothing. (inaudible 2 sec.)

Det. Leuci: That's very nice of ya.

DeStefano: That made it 23 minus 5 - like I told Eddie four hundred fifty (inaudible 4 sec.) Now do you think I should do that or do you think I could hold it back (inaudible 2 sec.) hah?

Det. Leuci: If it's coming from him hold it back..

DeStefano: Hah?

Det. Leuci: If its coming from him hold it back.

DeStefano: If its coming from from him hold it back.

Det. Leuci: Yeah if it's coming from him you hold it? You keep it, what the fuck. Really I'm telling you.

DeStefano: Alright.

Det. Leuci: Fuck him.

DeStefano: You don't like him?

Det. Leuci: I don't like him you wait till you wait till some day he really really wants something I mean this thing he really wants and you know and I played this wrong. But next time Boy I assure you he's gonna go, he's gonnal make up for this one. I'll tell you that.

Destefano: You should make him pay. He has plenty to pay with I know, he has.

Det. Leuci: If he don't shame on him right eh?

DeStefano: He has Bobby he has.

Det. Leuci: I mean what the fuck

DeStefano: He just paid fifty thousand for his place up there (inaudible 15 sec.) He bought one of those brick-stone buildings over there, (inaudible 7 sec.) He's got the coconuts.

Det. Leuci: I'll hit him right over the head with one of them fucking coconuts.

DeStefano: You're right man.

DeStefano — What about the other thing with Marcone? What is you word on that?

Det.Leuci — Exactly what I told you last time, nothing's changed No, absolutely not, he's going to be the only absolutely guy. Like they had even considered like, calling the cops, so they put that out. There not going to call the cops to the Grand Jury. They want Marcone, they want him to feel the whole weights on him you know and that's it.

DeStefano — They're not gonna even bother the cops, huh?

Det. Leuci — They hoping for Marcone to make the whole case. They got no case. They got nothing, but they got everything if they turn Marcone.

DeStefano — Do they know that (Inaud. 2 sec.)

Det. Leuci — (inaud 1 sec.) They'll never scare a cockroach

DeStefano — But that's even if they go to trial on this thing, forget about it.

Det. Leuci — But thats a different story. He's gonna get a gonna get a fucking U.S. Attorney sit down talk to him you went to go to trial go ahead you lose...

DeStefano — You get fifteen twenty (inaud 2 sec.)

Det. Leuci — That what their hoping for but Marcone's smart. There scared of him. He's gonna sit. They gotnothing they can't convict him for that. How can they convict for the fucking, because this maniac going up there saying this happened, that happened I gave the man the money.

DeStefano — What about his wife?

Det. Leuci — She will testify about him.

DeStefano — (Inaud 2 sec.)

Det. Leuci — Yeah.

DeStefano — Well, she's a maniac too. How could her statement be any good; she was in a crazy home, about two months down in Florida, the Dutch Penthouse, In Florida.

Det. Leuci — Come on lets go huh?

DeStefano — What time I'll meet you tomorrow night?

(inaud 7 sec.)

Det. Leuci — That's right. How am I gonna do this?

DeStefano — Well you tell me (pause 3 sec.)

Det. Leuci — 8 o'clock tomorrow night.

DeStefano — Is that good with you?

Det. Leuci — Alright.

DeStefano — No. What do ya want?

Det. Leuci — Alright I'm gonna be working a little.

DeStefano — (inaud 2 sec.)

Det. Leuci — What are you talking about?

DeStefano — (Inaud 2 sec.)

Det. Leuci — Yeah, now you telling me this

DeStefano — I don't think I don't think you realize (inaud 5 sec.)

Det. Leuci — It won't work physically.

DeStefano — Its gotta be,you should have got them too, it must be there.

Det. Leuci — You know sometimes, they don't do those things until the day before trial.

DeStefano — They don't give them to you till the day before trial.

Det. Leuci — Yeah they gotta get them transcribed and all that shit.

DeStefano — The indictments were there, they must be there

Det. Leuci — All ready and everything else you think. If ther in there, you know, I think we should be able to get it.

DeStefano — (Inaudible sec.) a copy (inaudible 2 sec.)

Det. Leuci — I don't know, but it might be

Destefano — How much can it be what can it be?
Just like the statement you got on those people, there only four people. (inaud 3 sec.) Don't get because one is acquitted, (inaud 3 sec.) right, the only three you need is the fourth the fourth. You need Pulido, you need Beltran. I think I know where the other witness is (inaud 2 sec.) George Gonzalez didn't talk.

Def. Wnsl. didn't

DeStefano He didn't. I don't know what we'll do.
(inaud 2 sec.) they can't get him off the stand.

Det. Leuci — The thing is, I want to make sure, like you know, I don't want you go out of your pocket with this at all. You're not, you're not in this in the thing, you know, really.

DeStefano — In which one?

Det. Leuci — This thing here. What we were just talking about. This is like a the other guy that is either guy's obligation and that's what the should do.

DeStefano — Who?

Det. Leuci — The fucken lawyer, this fucken Rosner. In other workds like he's making you, I can't believe that he's making you come up with half this fucken bread. I can't believe it.

DeStefano — Are you kidding?

Det. Leuci — I'm serious I'm ...

DeStefano — Well that's the way he is

Det. Leuci — That's what I'm saying. This guys a fucken creep, and you want me to say like the guys you know (pause 1 sec.) not to bad mouth the guy I'm not gonna, I don't bad mouth nobody. Here's a guy with all kinds of fucken money, this guy, you know, no matter what happens tomorrow he's all right, no matter what happens next week he's alright you're out here throwing fucken steaks. You with him I mean what is it I never seen

Det. Leuci — anything like it, I can't believe it. (pause 2 sec.) that's why I say in the future boy.

De Stefano — (Inaud. 6 sec.)

Det. Leuci — Yeah, but its not him. [illegible] what i mean. Next week it'll be so[illegible] know that he's interested in and what [illegible] going to do. You know.

DeStefano — Well, then, I guess he'll pay much more (inaud. 1 sec.)

Det. Leuci — Because he ain't paying

DeStefano — Sure.

Det. Leuci — Then he'll take something off the top.

De Stefano — No, then he'll charge double. He'll charge double. Guaranteed that's what he'll do.

Det. Leuci — I'll never do anything with him. I'll never do anything with that guy.

DeStefano — (Inaud. 1 sec.)

Det. Leuci — No, I gotta go. I gotta get up up the fucken Bronx.

DeStefano — So alright so I'll leave you go, tomorrow 7 c'clock?

Det. Leuci — Yeah. 7 o'clock.

[illegible] — Rangiano's

Det. Leuci — Yeah, alright

[illegible] — About 8:15 he's gonna be there too...

Det. Leuci — ...and he'll be there too

DeStefano — and you wanna tellthem him (unadible sec.) look over here (inaud. 3 sec.)

Det. Leuci — Hey that's it you know.

DeStefano — Say if he puts up more that means I gotta put up more too. (3 sec. inaud.)

Det. Leuci — No, no tell him...

[illegible] — (Inaud. 3 sec.)

Det. Leuci — No, no (inaudible sec.) I'll talk to you tomorrow.

De Stefano — You don't want to do that?

Det. Leuci — No, no. I just want to tell him, I just want to tell him what I think of him and that's it. I don't even want to tell him that alright I'll see him tomorrow and we'll do what he can do that's all.

DeStefano — (Inaud. 3 sec.) until

Det. Leuci — Alright.

DeStefano — Alright.

Det. Leuci — Alright

[End of Conversation]

TRANSCRIPTION OF CONVERSATION RECORDED ON OCTOBER 13, 1971 BETWEEN DETECTIVE ROBERT LEUCI, EDMUND BOSNER AND NICHOLAS DE STEFANO AT PUB [illegible] RESTAURANT AND RUGGIERO'S RESTAURANT, FLATBUSH AVENUE, BROOKLYN, NEW YORK (#1013A)

EXHIBIT GOVERNMENT'S
U.S. Dist. Court
S.D. of N.Y.
GX 27a id

Det. Leuci — How do you feel?

De Stefano — How do you feel?
(inaudible conversation 3 min. 15 sec.)

De Stefano — Is he still around?

Det. Leuci — The guy that I have they call Jack Stewart.

De Stefano — Jack Stewart?

Det. Leuci — All right but how many Stewarts are there in the business you know -- let me find out.

De Stefano — Okay.

Det. Leuci — If they've got him (inaud. 2 sec.)

De Stefano — (inaud. 5 sec.) But we've gotta know.

(Inaud. conversation 17 sec.)

Det. Leuci — I know just what you want, I know just what you want. Find their number one rat. Alright.

(inaud. conversation 40 secs.)

Det Leuci — The fed's got him as a stool?

De Stefano — If he's on the payroll, right.

Det. Leuci — Well, the thing is like, there's so many different Feds.

De Stefano — What you mean?

Det. Leuci — I can find out if he is a stool with the Task Force or I gotta find out if he's stool with 90 Church.

De Stefano — Right.

Det. Leuci — Now, if he is with the Strike Force or something else like that.

(inaud. conversation 25 seconds)

De Stefano — Vivirni had the case.

Det. Leuci — What's he, a lawyer?

(inaudible conversation 20 seconds)

Det. Leuci — You haven't asked any wise guy at all about me? Tell me the truth because somebody is coming back to me. I have to see somebody tonight about something.

De Stefano — Who you gotta see? Then maybe I know.

Det. Leuci — Well you know it doesn't matter who I gotta see, I mean somebody from downtown.

De Stefano — Downtown

(Inaud. conversation 45 seconds)

Det. Leuci — Big guy, just stop eating, or what was it?

[5 minutes and 5 seconds inaudible]

Rosner — . . . maybe on the appeal I can do something for him.

Det. Leuci — I told him some guy - some guy told him that Jerry Lewis was a fucking genius.

Rosner — Terrible, he's terrible. I wouldn't have him represent me at house closing.

(inaudible conversation 25 seconds)

Det. Leuci — That's the whole thing, the whole point.

(inaudible 1 minute 5 seconds)

Det. Leuci — He had over a hundred thousand dollars worth of rare coins in his car and they glommed them. He never said a work. ya know

(inaud. 15 secs)

DEt. Leuci — Once you're connected and you're in front of this guy Travia and your're italian your're dead. This guy Travia will jump all over ya.

Rosner — He jumps all over anybody, but, ...

(inaud. conversation 2 minutes and 15 seconds)

De Stefano — They're tough coming off their bread.

Det. Leuci — Who? Wise guys? No, they're not, they're not, you know, but the only difference is you gotta get them. That's it, otherwise you know -

Rosner — (inaud. 2 seconds)

Det. Leuci — Exactly, you know. I mean their names are big names.

De Stefano — But if you ain't got em.

Det. Leuci — The whole thing is like their names are big names, anybody can drop their names. You know, like I got you, you got me, what does that mean? You know.

De Stefano — If you ain't got 'em right ...
(Conversation in Ruggiero's Restaurant)

Det. Leuci — (pause 5 seconds) Boy, I'm telling you - if you're not hungry when you walk in here, you get hungry once you're here.

(inaudible 25 seconds)

Det. Leuci — Well, as long as they pay, yeah, as long as they pay ...

De Stefano — As long as they pay

Det. Leuci — Let em eat where ever they wanna

De Stefano — As long as they pay.

Det. Leuci — Let them live where they (inaudible 6 seconds) That case with Jack, gee, I never found out what happened to that.

Rosner — That got dismissed.

Det. Leuci — That's fantastic. No wonder you got such a good name because man they were they dead whew -

Rosner — What do I eat

(pause 1 minute)

De Stefano — Everything is good here, really. (pause 12 seconds) You know Reed is bad, ya know Reed is backing away from Martinez. You know that don't ya.

Det. Leuci — Backing away?

De Stefano — That's right you know that, don't you?

Det. Leuci — I don't know.

De Stefano — Yeah how are you?

Det. Leuci — He's got to have a reason, right.

De Stefano — Yeh, we all know the reason.

De Stefano — Make a hot antipasto for the three of us, for the three of us. Make a hot antipasto for the three of us.

Waiter — (inaudible 3 seconds)

De Stefano — Hot antipasto for the three of us, so you make two. Make, ah, two, see if you have ...

De Stefano — Good, that's okay.

Det. Leuci — I'm just curious, I don't see it on here. You haven't got any gnoccis?

Waiter: — No.

Det. Leuci — All right, I just thought maybe I just didn't notice it. Okay.

De Stefano — Fettucini Alfredo. Do you have that?

Water: — (inaudible 1 second)

Rosner — What's in the seafood gourmet dinner?

Waiter	(inaudible 2 seconds)
Det. Leuci	Sounds good.
DeStefano	I want the scallops Fra Diavolo. Make it hot.
Waiter	Hot sauce?
DeStefano	A hot Fra Diavolo.
Waiter	(inaudible sec.)
DeStefano	A little linguine, yeah.
Waiter	(inaudible 2 seconds)
DeStefano	Plain (inaudible 4 seconds)
Waiter	(inaudible seconds)
Det. Leuci	Small order of linguine and lobster sauce and a seafood gourmet.
Waiter	
Rosner	Let me have the seafood gourmet.
	(inaudible conversation 6 seconds)
DeStefano	Want a Gin and Tonic? Gin and Tonics, three.
DeStefano	Let's get back to us. Let's get to the ranch.
Det. Leuci	Alright. The point--let's take it now, easy. I don't want you to get excited. (laughs). Let's understand each other, right. First of all, you're not dealing with me - number one.
369 DeStefano	Right -
	(There is a dispute as to what is next said)

Government's Version		Defendant's Version	
Det. Leuci	Alright, that's not important...	Det. Leuci	Alright, that's not important...
Rosner DeStefano	...I wish we were...) ...I wish we were...) simultaneous	(INAUDIBLE) DeStefano	...I wish we were
Det. Leuci	I wish you were too, ya know cause I'm a nice guy	Det. Leuci	I wish you were too, ya know cause I'm a nice guy.
Rosner	I know you are.	DeStefano	I know you are.
Det. Leuci	All right. Besides that, it's like . . .	Det. Leuci	All right. Besides that, it' like . . .
DeStefano	(inaudible 1 second)		

Det. Leuci	The most important thing we need as far as I'm concerned with this whole situation is that, my thing for the future with this guy. You've got to understand that. You're not concerned about that.

DeStefano — Hey, Bob - You'll never know when I'm going to need him through you.

Det. Leuci — Right.
Whether I misunderstood you and Eddie, or however it worked in other words I came to him, I said to him "I want the 3500 material, I want the indictment on Marcone."

Rosner — That has nothing, I don't want nothing to do with that.

Det. Leuci — Alright okay. That shouldn't have been put in.

DeStefano — All right, Eddie. You blamed for that don't you?...

Rosner — I'm not blaming anybody
I'm just saying (inaud. 1 sec).

Det. Leuci — No, no and you know the documentation whatever there was, that was necessary about that business in Miami. All right now, that's all he felt we had to get. Now if I said to you, which I shouldn't have said, maybe. Now, you tell me I did say it. Now I don't remember, but you say I said it say it, I must of said it, you know about the grand jury minutes.

DeStefano — The "G.J.s"

Det. Leuci — Yeah "G.J.s" (laughs) are available and easy to get. Now, I mentioned it to him, you know, like that, and he said well let's see, you know, what's happening. As far as he's concerned, what he's done is what he's done. He's completed his contract. Now, what he feels about it, now if I'm wrong like I say, I'm not wrong, you know I'm not wrong, but you know, that's where it's at. You talk about something - I don't know, I don't know. You know more about it than I do, Eddie. Let me ask you. He says to me, "Number one," he says, "it's not in the folder." Number two, he can go get it, he has to get it.

(Inaudible).

Det. Leuci Let him go get it (laughs) it's a very very touchy thing. You're talking about something that the mere possession of that, is like he gets pinched, five on the spot ... I didn't realize that. Which is like - see you're talking about something else a lot more serious.

(There is a dispute as to what is next said)

Government's Version

Rosner

I don't really figure (inaudible 1 second) exact money.

Defendant's Version

Rosner

I don't really figure (inaudible 1 second).

Det. Leuci I'm not worried about him if he makes a commitment to me, whatever, it is, you know, but he knows what he's doing, he's not doing it because he's you know, for love right.

Rosner . . . right.

Det. Leuci Understand if he's getting paid to do it, then he'll have to do it. But that's where I am now.

Rosner What does he have in mind?

DeStefano — Price, that's what we're talking about? I guess you both (inaudible 2 seconds).

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Rosner — What I mean to say is what the fuck do you have in mind?

(There is a dispute as to what is next said)

Government's Version

Det. Leuci

Well, let me say this.

Rosner

Let me say this, I will write down. (inaudible 7 seconds) would it help?

Defendant's Version

Det. Leuci

Well, Let me say this

Rosner

Let me say this, I would like to hear (inaudible 5) this, now if he wants to help.

Det. Leuci — You're right, it would help.

DeStefano — You're right a great deal, it would help.

Det. Leuci — Alright, there are no other witnesses, no other witnesses.

Rosner — Only three, there should be four. There's one that appears to be missing, let me say that the one that's missing has been interviewed you know. And he said that he was contacted. That's why something's got to be missing.

Det. Leuci — Well, the only thing I can (pause) the only thing I can imagine that they're not going to use him. I don't know.

Rosner — ... That could be ...

Det. Leuci — You know, that's the only thing I can imagine.

Rosner — That's possible.

Det. Leuci — You know, as far as like, you know, it's missing, whatever was there was there.

Rosner — (inaudible 2 second)

Det. Leuci — What they were preparing and getting ready, that was what's there.

Rosner — There's no doubt about it.

Det. Leuci — And your big concern is the case, right?

Rosner — Absolutely. I don't give a shit about (inaudible 1 second)

Det. Leuci — Now his statement to me, and of course, like I say, he's not a U. S. Attorney, but he just tells what the U. S. Attorney said. They think they ain't got a prayer, the only prayer that they had, that they thought they had, was to show previous and subsequent criminal acts.

Rosner — There's nothing there.

Det. Leuci — Alright, alright. Now they've interviewed, they interviewed some guys, some people. I don't know who they are.

Rosner — Right

Det. Leuci — We would know who they are if they were going to use them, but apparently, it didn't, it didn't work out.

Rosner — I know that. I know they did, and it didn't work out. I know exactly who they interviewed. It didn't work out because there was nothing absolutely nothing. They tried to concoct something from. They got one guy down in West Street now (inaudible 6 seconds). I know who the witness is.

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Det. Leuci — You're talking about Pulido.

Rosner — Yeh, they got him. He's in West Street now. Who else do they have to testify? Do they have Beltran? Do they have Hernandez? Now they say Hernandez's been clipped. Idon't know if he's been clipped. I don't know to tell you the truth. I don't know whether he has been or not I don't. I'd like to know what the hell have they got, do they have anything more than Pulido.

Det. Leuci — These people, these statements that you read, those three people would testify as to what they wrote in the statement.

Rosner — If they use those people, one of those three people, they're supposed to be missing.
What I was told by you, they think that I had this guy hit.

Det. Leuci — No, no, no. They didn't say, you know, our man was clipped.

Rosner — . . . Because I didn't. I don't know. I was relying on what you

Det. Leuci — . . . They're saying, they're saying according to him that they're sure that a guy's been clipped in this, because they just can't find the guy.

Rosner — That must be Hernandez, he seems to be missing) } simultaneous

Det. Leuci — That's as simple as that)

Rosner — I don't know who the hell is missing. I thought maybe you knew. I don't know.

Det. Leuci — All things being equal, personally, I don't know how you feel about this, but personally, you don't have to, you don't have to. You want the Grand Jury minutes only as icing on the thing for yourself, if you want it you want to spend another fifteen hundred dollars, a thousand dollars, to pay for the Grand Jury minutes, which you really don't need, I'll leave it up to you. But that's what it's going to be. It's not, what I say, you know.

(There is a dispute as to what is next said)

Government's Version		Defendant's Version	
Rosner	(Inaudible 2 seconds)	Rosner	INAUDIBLE
DeStefano	Hah?	DeStefano	hah I don't know.
Rosner	It's worth it. (inaudible conversation 24 seconds)	Rosner	(inaudible 24 seconds) I don't think it's worth it.
DeStefano	All right, (pause 2 sec) meet me in Brooklyn.	DeStefano	All right. (pause 2 sec) meet me in Brooklyn.

Det. Leuci — A thousand? (inaudible 2 seconds) (laughs)

Rosner — No, no?

Det. Leuci — Alright. Let's see if we can't agree, what, excuse me

DeStefano — (inaudible 2 seconds).

Rosner — I hate to say it, but like . . .

Det. Leuci — Eddie, if you haven't got the money, nobody then nobody has it, like (laughs).

Rosner — That's not the fact, believe me.

Det. Leuci — Alright, it's very possible.

Rosner — . . . by me

(inaudible 3 seconds.)

Rosner — I tell you (inaudible 1 sec.) if I had, it's possible I would.

(There is a dispute as to what is next said)

Government's Version	Defendant's Version
Det. Leuci	Det. Leuci
Did you expect any need? See, that's the whole point. Did you spend any money on this case? You didn't have to spend a nickel, had you come to, you know. Had I known, you know, in the beginning I don't know who else spent the money on, but you didn't need any ...	Did you expect any need? See that's the whole point. You haven't spent any money on this case. You haven't spent a nickel that's come to me. And had I known, you know in the beginning I don't know who you spent the money on, but you didn't need any ... so

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Rosner — Ah, I tell you what, what I spent it on is not what you're providing me. I'd still like to know .... so

DeStefano — (Inaudible 2 seconds.)

Det. Leuci — Alright, let me, let me say this, like, we'll make the price a definite price.

DeStefano — Yeh.

Det. Leuci — Alright, but more important, let's make it definite that I can get it, now he's like, he's treating it like that they don't need it ... You know, it's a big hassle for me to get it, you know ...

Rosner — ... Tell you what, we got twenty days. We start this fucking trial, starts November ....

Det. Leuci — Your date is off as far as he's concerned.

Rosner — What's the date he's got?

Det. Leuci — November 13th.

Rosner — He's off.

Det. Leuci — Okay.

Rosner — Unless they off and postpone it it's November 1st.

DeStefano — November 1st

Det. Leuci — Okay, you ain't got all that much time, you know.

Rosner — Got twenty days, today's what? The 15th, tomorrow's the 15th

DeStefano — Tomorrow's the 14th.

Rosner — 14th?

DeStefano — Seventeen days, eighteen days, fifteen-eighteen days.

Rosner — It's not going to do us any good - we'll get it in court in a month.

Det. Leuci — Well, far as I'm concerned, whatever he had, I told him look whatever you get, the whole thing everything, I want it, you know.

Rosner — Sure, that's the way I thought it was ...

462 Det. Leuci — You know

Rosner — . . . in the beginning.

Det. Leuci — Alright.

DeStefano — What did I tell you?

Rosner — That's the way it was explained to me whatever it is.

Det. Leuci — I agree with you, you know, I agree with you ....

(There is a dispute as to what is next said)

Government's Version

DeStefano

What did I tell you in the cafeteria, what did I tell you, what I said in front of him. What did I say? This is the way I thought, we thought, he thought it was. And I thought it was.

Rosner

(inaudible 2 sec.)

Det. Leuci

That's not, now really, you got to appreciate his situation, that he's told to do three things and then he gets a price of thirty five hundred dollars, and what has he seen? It was hard to come up with it. You know really, I now, now now as far as like anything you're concerned about, like other witnesses and things like that, you've got the whole case - that's the way he. You've got everything. I mean, what more is there to have, other than the Grand Jury minutes, which like I say he feels that they probably are transcribed, but he's not sure, now he, you know, he isn't sure about ....

Defendant's Version

DeStefano

What did I tell you? Go on tell him what I said, go on tell him what I said in front of him.

Rosner

Right. That's the way it was said at the beginning.

Det. Leuci

What did I say?

DeStefano

What did I say? This is the way I thought, we thought, he thought it was. And I thought it was.

Det. Leuci

That's not now really, you got to appreciate his situation, that he was told to get three things and price (inaudible) and what has he seen? It was hard to come up with it. You know really, I now, now now as far as like, anything you're concerned about, now as far as those other witnesses and things like that, you've got the whole case -

Det. Leuci (cont'd)

that's the way he's got it. You've got everything. I mean, what more is there to have, other than the Grand Jury minutes, which he feels that they are transcribed, but he's not sure, now he, you know, he isn't sure about ....

DeStefano ... but he is sure that's all they got.

Det. Leuci ... that's it.

DeStefano he guarantees it?

Det. Leuci guaranteed.

DeStefano In other words if there is something else we get the money back.

Det. Leuci I'll tell you what. If there's something that's a sleeper here that he doesn't know about it, and he should know about it, I guarantee you, you'll get the money back.

DeStefano That's all.

Rosner That's good, that's good, no, that's good (inaudible one second)

DeStefano — Yeh, yeh, I understand that, that's good too, then in other words he must be sure.

Det. Leuci — Alright, alright, alright, so listen, I'll put that, I'll put that to him, fifteen hundred dollars for the Grand Jury minutes, and aside from that, more important, a thousand I'm getting, you know.

Rosner — How long will it take him to get them?

Det. Leuci — Well let's find out. Like I said to him, you know . . .

DeStefano — If we don't get it pronto, then we don't need em.

Rosner — ... Doesn't do us any good to get it at the last minute.

DeStefano — We don't get it pronto, we don't need it.

Det. Leuci — You're going to get it at the last minute anyway, right?

Rosner — ... We'll get them as a matter of right anyway. So with us it's just a matter of time, and we're paying a lot of money for nothing.

DeStefano — If we don't get it now ...

Det. Leuci — I agree with you, I agree with you.

DeStefano — If we don't get it now. . . .

Det. Leuci — I'm not arguing, I agree.

DeStefano — You have them in your pocket.

Det. Leuci — No I don't.

DeStefano — I thought maybe you did.

Det. Leuci — (laughs) No, I don't. I know you did, if I had them, you'd have them, you know that. Alright I mean like . . .

DeStefano

57 By Thursday, we need them, Bob. If we don't have them by then, we don't need them, Bob really. Am I wrong or am I right? There's a time it goes down. . .

Rosner

... like today is Wednesday, I'd like to have them Saturday ...

simultaneous

DeStefano — ... and the time is getting down.

Det. Leuci — Let me say this. If you can't have them by Friday night, then you're not going to have them. We'll leave it like that, all right?

Rosner — Yeah.

Det. Leuci — Then I'll tell him like that, if you get them by Friday, if you don't get them, forget it.

Det. Leuci — You've got this thing beat. You want to, you want to make one hundred percent?

DeStefano — What makes you sure we got it beat?

Det. Leuci — He's sure.

DeStefano — Well, why is he sure?

Det. Leuci — All the U.S. Attorneys are saying that you got it beat.

Rosner — Why the fuck are they going ahead with it? Why don't they dismiss it?

Det. Leuci — Why not go ahead with it? As far as that? I mean I'm just saying. I'm talking about things I don't know about, but why not go ahead with it?

DeStefano — Take a shot, just take a shot.

Det. Leuci — Sure, yeah, what would you do? That's a different story what I would do as - but I'm not a U.S. Attorney.

DeStefano — It also could be an embarrassing thing too. If they went this long, they went this long; yeah; they went this long, and they figure well, let's see what happens.

Det. Leuci — Well, what can they do?

DeStefano — Let's do like Tendy says, throw it up in the air and see what happens (pauses) right? see if it sticks to the wall or falls down

Det. Leuci — (laughs.)

Rosner — Listen I think the U. S. Attorney prosecuting this case he thinks it's garbage too (inaud. 1 sec).

DeStefano — Yeah, but you can't blame him for other people saying rumors too.

Rosner — (inaudible 2 sec.) but he didn't say it to me

Det. Leuci — Who is the U. S. Attorney you say (inaudible)//Rosecrans?

Rosner — Phillips Eh a guy I know that spoke to hime said ahh I hear you're going to get semared, the word is you going to get smeared, oh that's the word among the defense bar, but I don't think I'm going to get smeared. (Inaud. 2 sec).

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Det. Leuci — Alright like I say, you know (inaud. 1 sec)

Rosner — (Inaud. 1 sec)

Det. Leuci — I mean, I, if it was, if his feeling was the other way, I would say it, you know (pause 3 sec). The guy's liable to get smeared but nobody seems to worry about is Marcone's he's the guy's liable to get smeared.

Rosner — You want me to tell you something if my case was over and done with, I represented Marcone he'd walk his case is an easier case than Jackie's

Det. Leuci — Easy than Jackie's, yeh

(There is a dispute as to what is next said)

Government's Version

Rosner

18 Yeh, what do they have against him. That fucking guy he had to have (inaud. 2 sec) that guy he paid a high bail from before what ever (inaud. 3 sec). The guy's wife and the guy's brother and the brother and wife aren't going to lie for a guy to save him? (inaud. 7 sec) there are no wires in that.

DeStefano

When is this thing coming down?

Defendant's Version

Rosner

Yeh, what do they have against him. That fucking guy he had to have (inaud. 2 sec) that guy he paid a high bail from before, what ever (inaud. 3 sec) what do they have, the guy's wife and guy's brother. The guy's brother and wife they'd lie,

DeStefano

The're no wires there (inaud. 3 sec) (inaud. 2 sec).

Det. Leuci — Figure the first week in November. They got all this publicity now, they don't want to put this out. It's going to get like front page. Well, if not front page, they're going to a lot of publicity, you know?

DeStefano — So why do you wait and waiting for the first week in November?

Det. Leuci — Because they get a lot of publicity, now, on what they're doing, and they don't want to take away from it.

Rosner — (Inaud. 2 sec). Grand Jury.

Det. Leuci — Yeh they do.

Rosner — What's that about?

Det. Leuci — You wouldn't believe it, but you heard I told you, right the story about the cops. They have, the Knapp Commission. They had two junkies wired up in Harlem and these guys were like get me a Black and Decker saw I'll give you two bags, get me six bottles of scotch, I'll give you two or three bags, you know? They got all these cops for sales.

Rosner

DeStefano — Who the cops?

Det. Leuci — Yeh would you defend them all or what? Pretty tough.

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Rosner	I could. (inaud. 4 sec.)
Det. Leuci	How could you beat that case?
De Stefano	Who are the cops?
Det. Leuci	You know, patrolmen in the field group.
De Stefano	Patrolmen working in SIU?
Det. Leuci	No, SIU you kidding
Rosner	The equivalent of an undercover sale just as a guy can make an undercover buy, he can make an undercover sale. It's not entrapment, but the guy's got a preconception to do what he did, maybe setting them up for a later bust.
Det. Leuci	A junkie stool pigeon? yeah, right I guess.
Rosner	(Inaud. 1 sec.) make a buy. The guy won't (inaud. 1 sec.) say possession. (inaud. 2 sec.)
Det. Leuci	Tough decision. You, you mean you couldn't win? I'm afraid not, because there are all kinds of things he would have to do.
Rosner and Det. Leuci	(Laugh)
Rosner	(Inaud. 4 sec.) but you know the jury doesn't know exactly.
Det. Leuci	All right. The jury vants wants to acquit a cop. I think basically, you know?
Rosner	That's true, the cops are on the side of right? He was doing his duty.
Det. Leuci	I mean you know.
Rosner	(Inaud. 3 sec.)
De Stefano	It maybe evidence, ...
Rosner	Yeah maybe you know but a ..
Det. Leuci	Well God forbid. If I ever get in a jackpot, Eddie, you're going to be my lawyer.
Rosner	(Inaud. 2 sec.)
Det. Leuci	They tried one guy. Tried to get one guy nothing happened with it.
De Stefano	Who'd they try?

Det. Leuci — The only way we would have known is had they you know, turned him and they were going to use him.

Rosner — What the hell, did they turned? I don't understand.

Det. Leuci — Yeah. I don't know why the Knapp Commission got into Federal Court. They didn't want to put them in State Court.

Rosner — Why?

Det. Leuci — I don't know why either. Really I don't. I really don't know why. What would they do that. I mean, Hogan must be going bananas.

Rosner — (Inaud. 5 sec.)

Det. Leuci — That DA they got that (inaud. 1 sec.)

De Stefano — (Inaud. 2 sec.)

Det. Leuci — (Laughs)

De Stefano — They came back, no bill.

Det. Leuci — Oh, he's all right?

De Stefano — Yeah, they came back no bill and adjourned.

Det. Leuci — He's the same guy in that thing with Quinones, right?

De Stefano — Well, he was in the deal with (inaud. 1 sec.)

Det. Leuci — I want to say like, I got to talk to Quinones. I gonna to talk to him. Understand? I'm afraid. Not that I'm as long as the guy is fluent and a little bit sharp, there's absolutely no problem. And then...

De Stefano — (Inaud. 1 sec.)

Det. Leuci — There's no problem. No problem. I'll give him credit for making Bobby Peretti.

Rosner — (Inaud. 1 sec.) Bobby Peretti.

Det. Leuci — Yeah, that's right.

De Stefano — (Pause 3 sec.) I'm surprised.

Rosner — (Inaud. 2 sec.)

Det. Leuci — Surprised at what? That he's in the busfness?

DeStefano — Yeah.

Det. Leuci — He's never been out of business what are you kidding of what?

Rosner — He's never been what?

DeStefano — Never out of the business.

Rosner — Oh, oh.

DeStefano — He's never out of business.

Det. Leuci — That's his thing, you know?

Rosner — That's not really his thing.

Det. Leuci — Well that's his best thing.

Rosner — He doesn't discuss with me ...

Det. Leuci — No, that is for sure.

Det. Leuci — Very nice guy.

Rosner — Very nice.

Det. Leuci — (Pause 5 sec) Can any other information help you as far as like before, before the indictment that we spoke about already the thing about Russo going down to Miami and/this other shit.

Rosner — Will it help me, no I don't ... not important, that other stuff helps but ahh, not important, not disputed, not disputed. He did it no doubt/it. about So what, so what

Det. Leuci — Alright.

Rosner — So, so what. Like I said, I asked him to go down. Down there to find out what the story was, to straighten this thing out.

Det. Leuci — How'd they make this thing in the first place. What they do?

DeStefano — guy wanted to get a couple of years cut off his sentence (inaud. 1 sec). Somebody had a hardon for Eddie--that's exactly how they did it.

Det. Leuci — You know who this guy is and everything?

Rosner — Yeah, yeah.

DeStefano — I know how they made it. It wasn't from this case, it was something else. I know how they made it.

Rosner — Some guys can't stand to lose you know.

Det. Leuci — You know, it's a lot easier for you. I mean I'm not saying anything, I mean it's a lot easier for you to say that.

Rosner — That's what it is on the part of these guys, I mean I know what it is

Det. Leuci — Yeh, on the part of who?

Rosner — Tendy, Tendy, that was the whole thing.

(There is a dispute as to what is next said)

Government's Version

(Inaudible 4 sec.)

Rosner

There was a guy they were looking for, they said I knew where he was and he wasn't picked up, I didn't do nothing. That's what it was.

Defendant's Version

(Inaudible 4 sec.)

Rosner

They wanted a guy they were looking for they said I knew where he was and they wanted me to give him up. I wouldn't give him up. That's what it was.

Det. Leuci — They're incredible ain't they? Really, I mean it.

DeStefano — They're looking to do anything they can. They're looking to do yah forget about it. They been looking for a long time.

Det. Leuci — That's the whole, that's the sad part of it. They can get away with all these things.

DeStefano — You know why they're after Eddie. . . because seriously (inaudible 3 sec)

Det. Leuci — It's implausible to me that they can indict Marcone. Cause I was thinking myself, if I had a stool . . .

Rosner — . . . like this.

Det. Leuci — You mean to tell me a stool, I had a falling out with the guy or whatever. He walks into the U. S. Attorney's office and says hey he was gonna give me a package for something. You know, I get indicted for selling this guy stuff.

Rosner — That's a fact you get indicted.

Det. Leuci — That's incredible. Absolutely incredible.

Rosner — Let me tell you something this whole fucking case is based on the lowest creeps in the world. If you think that any of these people are an eighth of an inch above lying, if it would serve their own interest to do so. You're nieve. And it will serve the interest of every one of them to say what they thought the U.S. [illegible] to defend against, so help me God.

Det. Leuci — You're really at the mercy of a lot of people in that situation.

Rosner — The whole case is bullshit, so help me, we're completely innocent.

DeStefano — (inaudible 2 sec)

Rosner — If that were the case I would fight the case anyhow, right. If they got me, they get me cause I did it. But er I didn't do this fucking thing .... In a million years (inaud. 1 sec.) couldn't dream up this fuckin story.

Det. Leuci — You're a tough piece of work, Nick. (Pause 2 sec) I think the thing to realize, I don't know if you realize it, that at this point, this guy feels like he's done what he's supposed to do. Now I'm gonna tell him like, yuu know ....

Rosner — Well.

DeStefano — I thought for sure you'd have these things tonight. I'm a little disappointed.

Det. Leuci — Well, Nick.

DeStefano — I really am

Det. Leuci — As much as I like you (inaud. 3 sec)

Rosner — I thought it was supposed to be today too

Det. Leuci — As much as I like you and I do really, I'd much rather see you let down than me let down. And I've been let down one or two times, you know.

DeStefano — No fault of mine or Mr. Rosner's.

Rosner — I know one thing.----

DeStefano — You may feel that way

Rosner — I know I did the right thing

Det. Leuci — Who did?

Rosner — I did.

DeStefano — You were not concrete , and if it's not concrete who's fault is that?

Det. Leuci — Oh, no. I'm not arguing that. You're right. It's really my fault.

Det. Lauci All right, you're the guy that's really gonna have to answer for that because you're the guy insuring all that shit.

[There is a dispute as to what is next said]

Government's Version

Rosner

(Laughs) Listen, I don't know what's happening, but I'm listening. (inaudible I see)

Defendant's Version

Rosner

Listen, I don't know what's happening, but I'm listening.

Det. Lauci-Yeh, right.

DeStefano It's there baby it's there, you'll have no problems.

De Stefano — Only one thing can fuck us up, that's your end. That's all. If he don't fuck us up. We're home free.

Det Leuci — He's gonna get a minimum, a minimum of one real good case and he can get up to three cases, one real good one and two others you know.

De Stefano — That's all we need, actually we don't even need that much.

Det Leuci — (Inaud. 10 sec.) That's easy - alright.

De Stefano — Believe me, that's it - that's all we need - you said to me that you were worried about the other thing.

Det Leuci — Yeah, that's what I'm worried about.

De Stefano — Oh.

Det Leuci — No, I'm not worried about it at all. I'm not worried it's just a matter of like you know my boss is in my corner and that's where the big thing is he's the only guy that really could put a kabash on it.

Det Leuci — What I'm afraid of is that they're going to call Butera in.

De Stefano — What's he gonna say?

Det Leuci — Why does this guy wanna work for ya? He wants to work.

De Stefano — (inaud 2 sec.)

3/4 Det. Leuci — That's exactly what I told 'em. I said look between you and I the guy feels that Butera - he doesn't trust him - like him and he doesn't want to work for him.

De Stefano — That's exactly what it is.

Rosner — How did he get in touch with you?

DeStefano — When he comes out, you gonna come into the bathroom I've got that money for you (inaudible 3 seconds) Now we can get back.

DeStefano — It's a slow waltz.

Det. Leuci — What?

DeStefano — It's a slow waltz.

(Inaudible 1 sec.)

DeStefano — No this, this is a slow waltz, no that it's your turn.

Det. Leuci — Let's get it ok no not with him.

DeStefano — Alright - you don't think it is, right.

Det. Leuci — Absolutely not he's not that kind of guy.

DeStefano — Det. Leuci (talking same time 15 seconds)

Det. Leuci — He wouldn't think you know, I take it from you, you know even more than I do Nick and I assumed it was like No .. ya know no big deal. It is a big deal, it's not easy it's not in the same place as the other thing like they weren't easy to get - It's a hassle to get it.

[illegible] Well I'm not going to tell you somethings easy or not.

Det. Leuci — No I know

DeStefano — Would I do that?

Det. Leuci — No

DeStefano — Would you tell me if you were on the other side

Det. Leuci — No, absolutely I agree with you

DeStefano — I mean if you can't (inaudible 3 seconds) know really (inaudible 3 seconds)

Det. Leuci — He's not a greedy guy this guy

DeStefano — Alright that's good

Det. Leuci — What he wants to do is establish his reputation I told him that's the most important thing to do that establish your reputation as being reliable and truthful once you've done that you can make your own ticket. You know.

DeStefano — Eddie we agree on the other thing?

Rosner — (pause 3 seconds) Friday you're gonna get it?

Det. Leuci — I know ...

[There is a dispute as to what is said next]

Government's Version

DeStefano

If its not by Friday I don't think we'll need it.

Det. Leuci

Well, let's leave it to him tool mean if it takes him till Tuesday ...

Rosner

... alright ...

Defendant's Version

DeStefano

If its not by Friday I don't think I'll need it.

Det. Leuci

Well, let's leave it to him tooI mean if it takes him till Tuesday ...

Rosner

by Friday ... alright

Det. Leuci — What the hell is the difference let's find out if it's possible to get.

Rosner — See if he can do it.

DeStefano — (Inaudible 2 seconds) the 30th, the 30th (Inaudible 2 seconds)

Det. Leuci — No

DeStefano — I really mean that then its not worth while to me

Rosner — (inaudible 3 seconds)

Det. Leuci — No you're getting it right, you getting it right - [illegible] they're going to give it to you anyway right, why don't they give it to you like the day before.

Rosner — The, that's what they're required to do - they don't have to do shit - they go right by the book. The book gives it to you like after the witness testifies you get it but I'd like to know anyway - actually we're ready

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regardless, but, a, I'd rather have it. I'd rather be forwarned (inaudible 1 second)

Det. Leuci — Tell ya I spoke about everything, I'm sure everything is going to work out. There ain't that many really nice people around, you guys are nice people I won't (inaudible 2 seconds) jackpot like that.

Rosner — Just between you and me we are.

Det. Leuci — ... I'd love to see the other guy in the jackpot too (inaudible 2 seconds)

(Laughter)

(inaudible conversation 34 seconds)

Det. Leuci — (Inaudible 2 seconds) The most comical guy in this whole thing turns out to be this guy, uh, the lawyer, I always forgot his name the Italian guy from Florida.

De Stefano — Negretti.

Det. Leuci — He's a fucking shakedown artist this guy. He is such a fucking liar he makes this up no other reason he can make this up other than looking to make a fucking score.

Rosner — He tried to shake me.

Det. Leuci — That's funny, that's really funny.

Rosner — (inaudible 2 seconds)

Det. Leuci — That's really like crazy, right.

De Stefano — I told you right.

Rosner — I wouldn't even bother with him, not worth it.

Det. Leuci — That's funny.

De Stefano — Try and found out if there's nothing else involved, the other thing, the second thing.

Det. Leuci — I'm telling ya, you talking about the other thing with the other guy?

De Stefano — With Negretti.

Det. Leuci — Talking about a problem as far as your concerned - Well, I'm telling ya there nothing else - I'm telling that's another thing (inaudible 3 seconds) I'll tell ya I gotta know otherwise I ain't going to tell ya.

De Stefano — Alright - In other words we ain't going to get no sudden shock ...

Det Leuci — I don't want you to look at me like to say (pause 2 seconds) I don't need that I like to be able to walk with my head up and walk out and not turn around ...

De Stefano — (5 seconds inaudible)

Rosner — (3 seconds inaudible)

De Stefano	(5 seconds, inaudible)
Det. Leuci	He's a real schemer
Rosner	(Inaudible one second)
De Stefano	(inaudible one second)
Rosner	... undoubtedly he's a one thousand percent schemer
De Stefano	He looked to shake you down too?
Rosner	Yeah
Det. Leuci	He looked to shake you down too.
Rosner	Sure
De Stefano	Why these guys got scruples? Why they'd shake down anybody they can.
Det. Leuci	He really deserves a slap in the face this guy.
De Stefano	And then I heard something else too that I'll tell you about after about your other clients about everybody's (inaudible 2 seconds) lawyer.
Rosner	(Inaudible 1 second)
De Stefano	I'll explain it to you after

Det. Leuci — When I see it, I'll believe it.

De Stefano — (inaudible 10 seconds) I heard he had a big hand in that. I heard he swung that (inaudible 2 seconds)

Det. Leuci — That he what?

De Stefano — You better check into that. I heard he swung that (inaudible 2 seconds)

Det. Leuci — That he what?

De Stefano — You better check into that. I heard he swung that pretty good. You better check into that. See there may be something you don't know see maybe you'll learn.

Det. Leuci — Well, I'll tell you, if that's true, it would change my entire opinion about the guy.

De Stefano — Yeah, I heard he swung that pretty good. Not from him either. Somebody else.

Det. Leuci — You want coffee? No yeah, I would like a cup of brown coffee. Brown. Do you have Brown coffee?

Det. Leuci — No, I ate like six fucking people here. All right, so I'm gonna ...

De Stefano — Take it to him.

Det. Leuci — Well, I'll take it tonight, but that's not important. The other things important.

De Stefano — No, I'm just saying (3 second inaudible)

Det. Leuci — I tell you, you know, I have a, I just have a feeling.

Kosner — I say I wouldn't rely on him to do it.

De Stefano — True

Kosner — I tend to go your way.

Det. Luci — No, it's just that a guy that gets some kind of satisfaction out of telling you that you're gonna get locked up when in fact he don't know. You can tell like, you're gonna get indicted. You can tell like a certain kind of satisfaction out of telling you that. There's something wrong with a guy like that. I don't care what anybody says.

De Stefano — Maybe it's when he comes off.

So when he comes off. You ever see him on the stand?

Det. Leuci — I know. He's like a rock. A good witness.

De Stefano (inaudible 2 sec.)

Det. Leuci Malone

Rosner Malone is not as smart as (inaudible 1 sec.) but a very, very nervous guy.

Det. Leuci But Malone's the guy that makes the cases though You're right, you know. Reed's got a certain amount of sophistication about him, you know, he really does.

De Stefano But I'll tell you something. Suppose somebody was gonna talk to somebody. They would talk to Reed before they'd talk to Malone.

Rosner Oh, yeah.

Det. Leuci Uh...

De Stefano See, you're on one side Other people are on the other side, follow me.

Det. Leuci Yeah, I understand.

Rosner (inaudible 2 sec.)

De Stefano I can't talk to nobody, really, no I can't.

Det. Leuci	No, I don't. (inaud. 5 sec). Use a cucurer, Eddie, break your heart (corner leaves table) (pause 3 sec). Tell I'll tell you the truth. I like him a lot better tonight than I did the last time, you know, and of course, you got more comfortable with the guy
DeStefano	Right. No, He's not a bad guy.
Det. Leuci	No. In fact, I'm gonna tell, I'm gonna speak to my cousin, to come over and speak to him.
DeStefano	(Inaudible 2 sec)
Det. Leuci	You know, See, my mistake was in the beginning (inaud. 2 sec)
DeStefano	He didn't want to. You wanted to.

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Det. Leuci — You got that thing? What do you want to do, you want togo into the bathroom or you don't have to go into the bathroo

De Stefano — No. I want to.

Det. Leuci — You want to take a leak, oh, all right.

De Stefano — The only thing, he is bad. I know that, 'cause everybody knows. But, other than that, he's not a bad guy.

Det. Leuci — What do you mean he's bad? If he gives his word, it's there, right?

De Stefano — Huh?

Det. Leuci — If he gives his word, it's there.

De Stefano — Well, in this case 'cause it involves him, but. - another case is something else. That's why I said,Bobby, you better be careful (inaud 5 sec.)

Det. Leuci — I want to make a point. I don't know if he'll tell him. I don't want him to tell him. Not yet. I really don't.

De Stefano — He will tell him (pause 8 sec.). I shouldn't tell you, I should (inaud. 3 sec.) I should let you go deep into the water, paddle around, what the fuck am I doing? (inaud. 3 sec.) How did you make out?

(Inaudible)

Det. Leuci — I'm finished. I couldn't get another thing down. I drank, the dinner was very nice, short, I don't like the taste of gin, you know.

De Stefano — Too warm.

Det. Leuci — You know, too much taste of gin. Tastes like...

De Stefano — Close the door, man

(Conversation in bathroom)

Det. Leuci — Ha. Ha. No wonder.

De Stefano — Nothing here, nothing, believe me.

(DeStefano counting money and giving it to Det. Leuci)

De Stefano — four

Det. Leuci — four hundred

De Stefano — (pause 15 sec) four fifty

Det. Leuci — (pause 6 sec). Six

De Stefano — (pause 11 sec) how much?

(pause 7 sec.) that's four

Det. Leuci — (pause 3 sec) that's right, exactly

De Stefano — exactly right...

Det. Leuci — exactly right...

De Stefano — Now, alright that leaves fifteen, right.

Det. Leuci — That's right, alright but not for you though - for him.

De Stefano — What do you mean not for ---

Det. Leuci — Whatever there is there, that you gotta put in discount.

De Stefano — Well, why are you doing that?

Det. Leuci — What for, why not?

De Stefano — Alright. You want to do it that way.

Det. Leuci — You know, I told this guy, you know, that everything was agreed to already, and everything is ... he's like, if he can do it, he'll do it, but nothing else extra.

De Stefano — Don't you think he'll do it.

Det. Leuci — I think so.

De Stefano — Alright, remember I told, you about (inaud. 1 min. 10 sec).

Det. Leuci — All right now, so as far as the other guy is concerned...

De Stefano — George Stewart

Det. Leuci — Yeah, (inaud. 2 sec.) I'll forget now, wait a minute let's go over it again so I know.

De Stefano — George Stewart

Det. Leuci — George Stewart I know.

De Stefano — (inaud. 6 sec) directly a result of (inaud 2 sec) right

Det. Leuci — Yeah right.

De Stefano — and if the fed's got him -- If the feds dont have him (inaud 2 sec).

Det. Leuci — The guy's not gonna get clipped, though. Oh, that's your own business, but I don't I'd like to know that. I'm serious.

De Stefano — Why do you want to know that really. Why?

Det. Leuci — I'm no stool pigeon. I'm telling you, I'm no stool pigeon. I don't know what kind of guy this guy is. the guy may be a nice guy. I ain't gonna look to get him fucking clipped. You know, if, uh, I want no part of it if the guy's a nice guy. If it turns out the guy's a stool pigeon and a bad guy, well, that's different story.

De Stefano — The guy is a bad guy. He is. Yeah. And as far as that's concerned don't worry about it.

Det. Leuci — I'm taking your word on that.

De Stefano — As far as what?

Det. Leuci — That it's guaranteed that it's not. I'm serious. You let me know and let me make my own decision. Don't do that without letting me know. Because, let me tell you, I got no qualms about it as long as I know. But I'll find out, you know, I got some scruples...

De Stefano — He might.

Det. Leuci — What?

De Stefano — He might.

Det. Leuci — I want to find out what kind of guy he is. I'll find out first.

De Stefano — That's something I can't guarantee I cannot guarantee it, I can't.

Det. Leuci — I'll find out first, all right?

De Stefano — I can't.

Det. Leuci — Then you know, that's not nice, really.

De Stefano — Would I ever put you in that position? I wouldn't do that.

Det. Leuci — No.
You would have without knowing my feelings. You wouldn't put me in that knowing my feelings, now you would do it. But you didn't know how I felt, you know? so I'm telling you how I feel about it. I mean it's happened a lot in the past. A lot. With good people, friends and really good friends have come to me, that I know for years. They wanted to find that kind of stuff out. And only under, you know, if you're specifically involved, you know, and you want to know and but you gotta guarantee me that, you know. Its just as good like just to stay away from the guy that's all. But if it turns out that the guy's a real fucking bum, you know, who is looking to hurt everybody in the world, well, fuck him. He needs to get what he's gonna get...

De Stefano — He's gonna hurt a lot of people.

Det. Leuci — Well, fuck him, then.
If i find that out, not only will I find out where he is, I'm the best at doing that, I can find anybody. I'm telling you I'm famous for that. I find 'em. I'll find the other guy.

De Stefano — Look, I said to these people (inaud 10 sec).

Det. Leuci — Alright (Jnaud. 2 sec.)

De Stefano — If you put me in that position...

Det. Leuci — But I heard this guy's name before. You know, it's really ringing a bell, but I can't, haven't ya know -

(inaud 1 sec) we get the check yt can we get together Friday...

De Stefano — Yeah.

Det. Leuci — Listen, let me leave

De Stefano — Yeah.

Det. Leuci — And, er.

DeStefano What time Friday night?

Det. Leuci Well, I suggest the best thing for Friday is during the day, and er.

DeStefano That place?

Det. Leuci That place over there is good.

DeStefano What time? Same time?

Det. Leuci Yeah. You'll have the other guy with you, yeh Okay. Same time

DeStefano I ain't gonna walk in with him.

Det. Leuci No, no, no, no, you shouldn't. (inaud. 3 sec). All right, Eddie, whatever, all right. Thank you very much, fantastic meal.

(inaudible 1 sec.)

DeStefano Don't forget ... alright?

Det. Leuci The other thing. You're telling me like that and I'm taking it on your word.

DeStefano On my word.

Det. Leuci And that's all. That's all I need.

DeStefano Right. They proved to me that that was it, and they can't go back on it.

Det. Leuci Okay.

DeStefano 'cause they put me in a very precarious situation.

Det. Leuci Well, I'll find out onmy own, too.

DeStefano You find out on your own. You can do that.

Det. Leuci But, if, you know, what I wanted to do is get like I'll find out anyway. I'll find out what you wanted to know anyway. Allright. And then I'll back down, that's you're gonna tell anybody.

DeStefano Forget about it, if you don't want to do that you don't have to.

Det. Leuci Alright. The most important thing is ...

DeStefano (Inaud. 2 sec).

Det. Leuci Yeah, all right. Right.

De Stefano	The other thing that's for sure
Det. Leuci	Alright
De Stefano	Alright
Det. Leuci	OK
Tenner	(Inaud. 3 sec)
Det. Leuci	Okay. The name really rings a bell, but besides that, Okay.
De Stefano	(Inaud. 5 sec.)
Det. Leuci	Yeah, really. I should. I got all day tomorrow.
De Stefano	(Inaud 5 sec.)
Det. Leuci	I don't know what's involved, but whatever it is, you decide. Alright, alright, okay.
	(STREET NOISES)
	CONVERSATION ENDS.

U.S. Dist. Court
S.D. of N.Y.

GX 28a ~~ID~~.

TRANSCRIPTION OF A RECORDED CONVERSATION ON OCTOBER 25, 1973 BETWEEN DETECTIVE ROBERT LEUCI, EDMUND ROSNER, AND NICHOLAS DeSTEFANO AT THE PAYTON RESTAURANT 454 Broadway, New York, New York (#1015A)

Det. Leuci — How you doing? I'll have some yogart.

DeStefano — Yogart and (inaudible 3 sec.) I hope you did it. (inaudible 7 sec.)

Det. Leuci — Don't worry about it. He's not registered by anybody, he's not registered with anybody in my office. He's not registered with anybody, anybody with the Feds. He's not registered with anybody in narcotics, at 90 Church Street. I can't swear for, you know the Task Force or the Strike Force.

DeStefano — Maybe they have em.

Det. Leuci — He's not known anywhere.

(inaudible 45 sec.)

Det. Leuci — I just want to get some yogart and some pill.

DeStefano — Yah.

Det. Leuci — (inaudible 45 sec.) You know he knows everybody under the sun this guy, and everyone knows him. You got eye brow pencil under your eye. It's off. Can I get strawberry yogart, strawberry, yeah sign there, right here, that's it and a piece of mellon.

DeStefano — (pause 19 sec.) (inaudible 1 sec.)

Det. Leuci — Is that other guy going to be here or what?

DeStefano — Who?

Det. Leuci — (inaudible 1 sec.)

DeStefano — How did you make out, Bob?

Det. Leuci — It's not going to be any problem.

DeStefano — Hah.

Det. Leuci — It's not going to be any problem.

DeStefano — (inaudible 5 sec.)

Det. Leuci — We'll sit, he's not going to join us right? (Referring to Edmund Rosner)

DeStefano — (inaudible 2 sec.)

Det. Leuci — (inaudible 18 sec.) What do you want? Sit over there (pause 37 sec.) What did you do with your tray? (pause 16 sec.) I feel bad. I tell ya. The other thing as far as he's concerned, he's gone to do his best. You're not gonna to be able to do it, now we're not prepared, they're not dorm in the folder. He said like give him Tuesday. If he can do it he should be able to do it by Tuesday. Now, as far as the other guy's concerned. You know had a meeting and everything alright in fact everybody is annoyed at Ruben.

Det. Leuci — There is no reason for you to be here.

Rosner — That's what I figured.

Det. Leuci — Alright, well we gotta see, you gotta give us, give us, (inaudible 1 sec.) -- the way it's left now (inaudible 1 sec.) till Tuesday.

Rosner — Alright.

Det. Leuci — you know like . . .

Rosner — . . . Do you think he's going to come up with anything?

Det. Leuci — Easy, apparently there's nothing to it. (inaudible conversation 10 sec.)

Det. Leuci — I went over that, I went over that with him.

Rosner — But you see like how many people that were indicated one wasn't supposed to be (inaudible 1 sec.) or what remember?

Det. Leuci — That's rig[illegible].

Rosner — But ah - the other two are there buy my understanding was that one of the other remaining two is not. But really from those three the only one they got from my understanding they only have one, one of the three. Now he (pause 2 sec.) - I don't think. I mean they've not supposed to be able to locate the other one.

Det. Leuci — Alright - but we're talking about a witness - I mean your talking around in circles what amounts to

Rosner — (Inaudible 10 sec.)

Det. Leuci — I don't know - OK ...

Rosner — (Inaudible 6 sec.)

Det. Leuci — All they have, first of all - all they have are three people right.

Rosner — Right.

Det. Leuci — Out of those three people - right.

Rosner — Right.

Det. Leuci — They have one guy for sure.

Rosner — Right.

Det. Leuci — And the other two we (pause 1 sec.) aren't sure about. Ya know like they got one guy for sure.

Rosner — I know they got one guy for sure. I would like to know about the other two, whether they located em...

Det. Leuci — I think they can locate them though. I think they ...

Rosner — The other two, both of em?

Det. Leuci — I think so - so like the fourth one they can't actually - there's one they absolutely cannot locate...

Rosner — Yeh.

Det. Leuci — Now I assume that was the guy cause there was nothing there.

Rosner — No! No! The guy...

Det. Leuci — ...there's one guy that they absolutely can't locate. I'm not sure who that is they feel that the guy is - you know they put him on a platter ya know.

Rosner — But that guy is one of the three guys I think, -- see if you can get me the details of the other two either they can't locate them or what (inaudible 1 sec.)

Det. Leuci — The particular - OK I'll tell you what we never you know we never really, you know we never really got that - there's a specific guy they feel they're gone.

Rosner — One guy if it's more than one guy, I'd like to know that too. I understand the briefing, I understand that one guy they think he gave the way you surmised there's another guy or two besides or another they can't find. But I don't know if its true or not. But I do know he got involved in trouble we know down in Florida. You follow.

Det. Leuci — I follow, well...

Rosner — I don't know if its true or not I can't, the information I have (inaudible 3 sec.)

Det. Leuci — Well the initial thing when I spoke to him that they originally had four.

Rosner —

Det. Leuci — Yeah out of those three one is good and the other two they're having difficulty with. Now what the difficulty is I never found out.

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Rosner	Alright, I'd like to know just ah, who the one is they're having difficulty with - I mean who this guys, -- just what the story is - how (inaudible 2 sec.)
Det. Leuci	I'm sure all that I can find out.
Rosner	And the, the other thing, (inaudible) get all, eh whatever (inaudible) you can get background on Fulido (inaudible 5 sec.)
Det. Leuci	Yeh, alright - you want is his yellow sheet?
Rosner	Yeh.
Det. Leuci	Alright.
DeStefano	Over there (inaudible 3 sec.)
Rosner	There, or over here, it's the same one, what's the difference (inaudible 3 sec.)
Det. Leuci	Well it would be the same thing over in Federal - you know
	(inaudible conversation 3 sec.)
DeStefano	The FBI
Det. Leuci	You can get it? I'll get it.
DeStefano	I can get it too (inaudible 6 sec.)
Det. Leuci	No, I mean its no problem.
Rosner	(Inaudible 2 sec.)
Det. Leuci	No I mean, but the way you were saying it I thought maybe you did it like, like official you know.
DeStefano	(Inaudible 3 sec.) (pause 2 sec.)
Det. Leuci	I got to make out a request.
DeStefano	You're kidding.
Det. Leuci	Sure I gotta.
DeStefano	You got to make out a request?

Det. Leuci — Sure I gotta make out a request.

DeStefano — (Inaudible 2 sec.) make a photostat and everything.

Det. Leuci — You're kidding.

DeStefano — I swear to God, what's wrong with you (inaudible 2 sec.)

Det. Leuci — That was before they sent em up to Albany.

DeStefano — I get em yet, sure I can get them.

Det. Leuci — (pause 9 sec.) I don't know how you're going to get em. (inaudible 2 sec.) get em, I can't get em.

DeStefano — What's so hard about that?

Det. Leuci — I can get em, but I gotta wait...

DeStefano — What's so hard about getting it?

Det. Leuci — I gotta go over there with a request I gotta type up a "49" and go official ya know, it's no problem, I just ...

DeStefano — Let me get it.

Det. Leuci — I'll put em in my case, that's all.

DeStefano — (Inaudible 3 sec.) Alright, it's up to you. I can get it in a minute only I don't wanna go to the Bronx.

Det. Leuci — (laughs) Nicky the Clerk.

DeStefano — Yeah (inaudible 6 sec.)

Det. Leuci — That Ray's not mentioned...

DeStefano — No, huh

Det. Leuci — I don't think that guy's got a record. Has he got a record?

DeStefano — (Inaudible 2 sec.) Absolutely. (inaudible 7 sec.) I had something for you this morning but cause Nickie is down there too. (Inaudible 16 sec.)

Det. Leuci — We got something coming off Monday and Tuesday.

DeStefano — A certain party between, (inaudible 1 sec.) is that it?

Rosner — (inaudible 1 sec.) On that other thing we heard maybe come up with or do you want to wait on it?

DeStefano — I'll wait on that - wait on that, I'll figure that shit out.

DeStefano — The other thing was an important thing to me too.

Det. Leuci — There was no way I could have known that. The guy never been pinched as far as I know now. Has he got a record from before this guy or who?

DeStefano — No, the thing I told you about, we're talking about Stewart, Eddie.

Det. Leuci — He's not listed any place.

(inaudible 5 sec.)

Det. Leuci — Well, that doesn't mean anything. He still has to, you know, sho up some place, anywhere. Did he get convicted in a conspiracy or anything like that?

(inaudible 1 sec.)

Det. Leuci — Well, anyway the Feds haven't got no record on him at 90 Church Street, and we have nothing in our office.

DeStefano — The Feds that's, who, have em are the F.B.I., 90 Church.
(Inaud. 2 sec.)

Det. Leuci — Now let me say this if he is a real special, you know, top-notch type guy, top-notch stool, it may not be available so easy, you know.

DeStefano — Well, I'll tell ya whatever it (inaud. 2 sec.) It's worth it, whatever it is, worth it, I told you that.

Det. Leuci — Do you have any idea, about what happened, when it happened, who took him?

DeStefano — Yeah, he'll tell you.

Rosner — I can give you all the information. I don't have it right now but I can give it to you. It's up in the office right now.

DeStefano — Well more or less you've got an idea of it. When did they take him?

Det. Leuci — BNDD took him?

Rosner — That's right. I can even give you the date, but I don't remember it right now, I got it in the office, up in the files.

Det. Leuci — Who did they take him with?

Rosner — A girl by the name of Cidney Gershon and a guy by the name of Lawrence Shaw. (Inaud. 1 sec.)

DeStefano — (Inaud. 1 sec.)Sidney Gershon and Lawrence Shaw.

et. Leuci	Where they from?
osner	Where's he from?
et. Leuci	Or where was the collar made?
osner	(Inaud. 7 sec.) They were arrested in the hotel. He was arrested downstairs outside on the street.
et. Leuci	I'm going to tell you something right now, if this guy, if this guy, if there's such an arrest...
osner	Definitely was ...
et. Leuci	and he's not mentioned.
eStefano	...he's gotta be.
et. Leuci	If he's not mentioned, then he's the stool.
e Stefano	Hah.
Det. Leuci	He's not mentioned, then he's definitely the stool.
DeStefano	He's not mentioned where?
Det. Leuci	He's not mentioned anywhere. (Inaud. 1 sec.)
DeStefano	(Inaud. 2 sec.)
Rosner	He's on trial.
DeStefano	He was on trial, he's arrested, don't you understand, he's indicted.
Rosner	He's indicted.
Det. Leuci	All right, I'll go back to that guy maybe, he just gave me a bullshit look.
DeStefano	You understand he's--(inaud. 2 sec.)
Det. Leuci	Yeah, let me tell you what I did, I got a friend of mine over there, I gave him a call. What you got on this guy. He said we got nothing on him, zero,-zip, all right. So now, the only thing I could say is the guy didn't look good enough...
Rosner	...Take another peek.

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Det. Leuci — Where they from?

Rosner — Where's he from?

Det. Leuci — Or where was the collar made?

Rosner — (Inaud. 7 sec.) They were arrested in the hotel. He was arrested downstairs outside on the street.

Det. Leuci — I'm going to tell you something right now, if this guy, if this guy, if there's such an arrest...

Rosner — Definitely yes ...

Det. Leuci — and he's not mentioned.

DeStefano — ...he's gotta be.

Det. Leuci — If he's not mentioned, then he's the stool.

DeStefano — Hah.

Det. Leuci — He's not mentioned, then he's definitely the stool.

DeStefano — He's not mentioned where?

Det. Leuci — He's not mentioned anywhere. (Inaud. 1 sec.)

DeStefano — (Inaud. 2 sec.)

Rosner — He's on trial.

DeStefano — He was on trial, he's arrested, don't you understand, he's indicted.

Rosner — He's indicted.

Det. Leuci — All right, I'll go back to that guy maybe, he just gave me a bullshit look.

DeStefano — You understand he's--(inaud. 2 sec.)

Det. Leuci — Yeah, let me tell you what I did, I got a friend of mine over there, I gave him a call. What you got on this guy. He said we got nothing on him, zero,-zip, all right. So now, the only thing I could say is the guy didn't look good enough...

DeStefano (inaud) 6 sec).

Det. Leuci So he got arrested again, subsequently to first arrest, right?

Rosner Right, with a guy by the name of Bunum and another. Guy by the name of Joe, an Italian guy, you know who Bynum is?

Det. Leuci. ta, ta, ta, ta, ta

Rosner Yeah. (inaudible 1 sec)

Det. Leuci Ro, he got pinched with Bynum?

Rosner Yeah.

Det. Leuci How long ago?

Rosner He's indicated in that, how long ago? (inaud. 2 sec.)

Det. Leuci (pause 5 sec.) Bynum your friend?

DeStefano You know what the story is. Somebody else gave (inaud. 1 sec) me bad news (inaud. 1 sec).

Rosner Bynum is bad news?

DeStefano (Inaud. 5 sec)

Det. Leuci He's a stool.

DeStef[illegible] Bynum is?

Det. Leuci Of Course - (pause 6 sec.)

DeStefano (Inaud. 1. sec.)

Det. Leuci Bynum

Rosner Joe Bynum?

Det. Leuci Al Bynum.

Rosner Al Bynum. That's the man, that's the man; no doubt about that.

Rosner I heard that ...

Det. Leuci — I'll find out, as far as I know the guy's a stool was a stool, I don't know if he is now he's a stool for the Feds.

DeStefano — He worked for the Feds.

Det. Leuci — I'll find out.

DeStefano — Where does Grosso come in (inaudible 1 sec.)

Det. Leuci — I know a stool for Grosso and a stool for the Feds, I'll find out (Inaud. 3 sec). He always had a good reputation, even as a stool, he had a good reputation you know don't misunderstand me this ain't the kind of guy to go burn down the world, ya know.

DeStefano — (Inaud. 2 sec.)

Det. Leuci — Oh he's a stool pigeon.

DeStefano — A stool pigeon would turn on anybody. He could be the best guy in the world, if he's a stool pigeon he could turn on anybody.

Det. Leuci — You talking about this guy that's the kind of guy he is.

Det. Leuci	He's been a stool for years.
DeStefano	Is is registered?
Det. Leuci	Of course - he's Sonny Grosso's stool, Grosso, McClean.
DeStefano	What's the other guys name? Joe who? (inaud 4 sec)
Rosner	(inaud 5 sec.)
Det. Leuci	I'll find out listen, let's leave it like this. I don't want to mark the guy wrong now, understand - Let me tell ya the guy worked, he was a stool, right. Now what I'll do is find out if he is active now.
DeStefano	The Guy's name is Bynum.
Det. Leuci	Bynum Al Bynum, 490 (inaud. 4 sec) 490 New York Ave., he lives. He owns a gas station out in Queens.
Rosner	Oh yeah (Inaud 3 sec)
Det. Leuci	He's the guy they kidnapped they kidnapped his, ah, brother, La Sorsa and the other guy.
	(Inaud conversation 20 sec.)
Rosner	I'll see ya. (Inaud 5 sec.) Do the best you can.
	[Edward Rosner Leaves]
Det. Leuci	Alright.
DeStefano	(inaud 1 sec.) Guy's a stool.
Det. Leuci	He was a stool.
DeStefano	(Inaud. 2 sec.)
Det. Leuci	Absolutely
DeStefano	About 1961-62
Det. Leuci	1961-62
DeStefano	(Inaudible 1 sec.) Grosso (inaud. 1 sec.)
Det. Leuci	No, he was up there till '68.
DeStefano	(Inaud 15 sec.) the guy's not a stool he's registered.

Det. Leuci — (Pause 14 sec.) So, what you want to find out is if Jack Stewart is a stool on that case with Bynum and the other people, or, who was the stool on the case.

DeStefano — Or who is the stool. Right. (pause 5 sec.) What about now, the other thing is dead right, it's dead right. (inaud. 5 sec.) I got to do something by the end of the month (inaud 2 sec.)

DeStefano — That's what they say. Right. What else, anything else, what about that other thing for Eddie and I.

Det. Lenci — I know what you mean, yeah well, let me tell you. The guy is like, I believe if they can get it easy, he'll get it, if he's gotta really got to go out of his way . . .

DET. LEUCI — Alright (pause 3 sec) the other thing about Bynum, you know lets find out first before we jump to any conclusions you know

DET. LEUCI — Just keep everything, keep everything in mind . . . .

DeSTEFANO — But I'm going to tell the guy anyway you know (Inaud. 2 sec).

DET. LEUCI — I'll tell you what. You got my home number.

DeSTEFANO — No, I don't want it.

(LOSS OF SIGNAL 30 SEC).

DeSTEFANO — But wait a second let's figure how we are going to do this, it's important to me.

DET. LEUCI — Alright.

DeSTEFANO — Do you (inaud. 1 sec) problems or (inaud. 2 sec.).

DET. LEUCI — No, I do I know, I know (inaud. 1 sec). It shouldn't be any problems I'm just trying to think of like, ah, today's Friday we got all day Monday.

DeSTEFANO — Yeah.

DET. LEUCI — I'll tell you what you want to do. You want to meet me Monday night.

DeSTEFANO — Ah, where (inaud. 2 sec).

DET. LEUCI — Um, where you go, you out this way, out that way.

DeSTEFANO — To me it don't make any difference where I meet ya cause (inaud. 2 sec).

DET. LEUCI — I'll meet you in Ruggiere's.

DeSTEFANO — Yeah, what time?

DET. LEUCI — Ah (pause 1 sec) 7 o'clock.

(Inaud. conversation 10 sec).

DET. LEUCI — Alright.

DeSTEFANO — Right.

DET. LEUCI — (Inaud. 2 sec) right, I got it, don't worry about it (Inaud. 4 sec).

DeSTEFANO — Tell me something (inaud. and loss of signal 75 sec).

DET. LEUCI — Alright. (pause 3 sec) Monday 7 o'clock.

DeSTEFANO — (Inaud. 3 sec.)

DET. LEUCI — OK. What if I want to reach you I call Nickie at his house.

DeSTEFANO — No. Call me like what's his name does over here at the office. (inaud. 2 sec).

DET. LEUCI — Give me your pen (pause 2 sec) my card see my card.

DeSTEFANO — I got a captain's card.

DET. LEUCI — You're a captain, yeah.

DeSTEFANO — I got a captain's card (13 sec pause).

DeSTEFANO — (2 sec inaud) but I wish I could have reached you last night then you could done it for me in the morning, you know.

DET. LEUCI — Give ya my home number.

DeSTEFANO — No. Well that was he said he tried to you were bowling.

DET. LEUCI — Oh yeah. I was bowling. Who tried to get me. Nickie Who the hell he talk to?

DeSTEFANO — I don't know, you were bowling.

(Inaudible conversation 6 sec)

DET. LEUCI — I bowl Thursday night.

DeSTEFANO — (Inaud. 3 sec).

DET. LEUCI — Alright. I'll be . . .

DeSTEFANO — . . . Cousin Nick.

DET. LEUCI — I'll be your "cousin Nick," alright. So you'll know who I am though.

DeSTEFANO — (Inaud. 2 sec).

DET. LEUCI — OK.

[END OF CONVERSATION]

U.S. Dist. Court
S.D. of N.Y.
GX 19a int.

TRANSCRIPTION OF CONVERSATION RECORDED ON OCTOBER 18, 1971 BETWEEN DETECTIVE ROBERT LEUCI, NICHOLAS DeSTEFANO, AND DETECTIVE NICHOLAS L'MATTINA IN VICINITY OF RUGGIERO'S RESTAURANT, FLATBUSH AVENUE, BROOKLYN, NEW YORK. (1819)

Det. Leuci — (Car door closing) here they are. [(referring to Grand Jury Minutes)]. Did I tell you it was a fucking novel or what?

DeStefano — Yeap.

Do I come back and talk to you? or what - if it's not this.

Det. Leuci — Yeah right, come back and get your money back.

DeStefano — Pulido, it's all Pulido, hah?

Det. Leuci — That's all the Grand Jury minutes - that's all of em.

DeStefano — This is all hah?

Det. Leuci — You gonna tell me this dude, guy, try to be nice you know what I mean? I don't want to go, I'm not shaking him down or anything.

DeStefano — No, I understand.

Det. Leuci — You know that would be nice that's all just let ...

DeStefano — You do have everything?

Det. Leuci — I think so - I'm a little confused now.

DeStefano — What is everything?

Det. Leuci — Alright, let's take it from the top - We got George what's his name there Stewart. You want his last address?

DeStefano — Yeah.

DeStefano — That one I'll take care of him.

Det. Leuci — Alright.

DeStefano — Hah?

Det. Leuci — Fine!

DeStefano — Alright.

Det. Leuci — Alrigh, so one o'clock tomorrow the same place.

DeStefano — The same place.

Leuci — And call me.

Det. Lamattina — Yeah.

[Conversation ends]

A 122

Transcript of a recorded conversation on October 19, 1971 between Detective Robert Leuci and Nicholas Bottofaro and Edmund Koster in and around Dayton Restaurant, 454 Broadway, New York, New York (101[illegible]

GOVERNMENT
EXHIBIT
U.S. Dist. Court
S.D. of N.Y.
G x 29a id.

A 123

DET. LEUCI — Well, I don't think they got all of that but he certainly got like 90, right?

DE STEFANO — I don't believe that.

DET. LEUCI — Well, maybe you're right. Maybe the guy you know. Somebody got that bread.

DE STEFANO — The fucken guy. He had to go upstairs and get the fucken money. This guy called me up five times this week. He's driving me crazy.

DET. LEUCI — Who?

DE STEFANO — This guy's diving me fucken crazy

DET. LEUCI — Eddie?

DE STEFANO — Yeah, can I get to hold his fucken head. (Pause 7 sec.) Stewart?

DET. LEUCI — Yeah, I got, I called -- honestly I

DE STEFANO — I think you're jerking me off.

DET. LEUCI — I'm not jerking you off.

DE STEFANO — You're jerking me off saying, 'Nicky look, I didn't know nothing. Be honest with me really. Be honest with me.

DET. LEUCI — Hey.

DET. LEUCI — Nicky, I got to talk to the guy over there, right? The guy wasn't in right? I give him a call this morning. The guy says, 'Call me back. Call him back. He ain't in.' that's all, So I told the guy.

De Stefano — Your friend, Marcone. I thought they were gonna throw him and put him in a fucken box. Where does he come off. Where does he come off doing these kind of things? I don't know. You know what it is? It's like a lot of people live in pipe dreams, you know? It's the same thing that ...

De Stefano — And I still don't believe that Marcone got the money that they claim ...

Det. Leuci — Hey listen you know

De Stefano — No I don't believe that.

De Stefano — Where the fuck do I come off reaching him he don't even know me. Why should I get involved in this?

Det. Leuci — Okay.

De Stefano — You understand? Now am I wrong?

Det. Leuci — I understand.

De Stefano — What I want to be. I want to be. Take my fucken shots. Be the fucken man in the fucking background. Let them make what they want, man.

Det. Leuci — Yeah, your right.

De Stefano — You know what I'm talking about? Yeah, Marcone I'm talking about Marcone. Maybe he did make money, maybe he did.

Det. Leuci — Well, you know, he made it, right?

De Stefano — I don't know nothing from nothing.

Det. Leuci — No, I know. But I mean, like, well, you know, he's not your father so I mean it's [illegible] He doesn't have to [illegible] whoever he has to answer to ...

De Stefano — Didn't he blow something with a Daley and Nova, huh?

De Stefano — But I said what said what you said to me I'm going by that you said to me don't talk to him don't stay toonear this guy.

Det. Leuci — Oh, No, absolutely. I mean why, why would you? I mean what (inaud. 2 sec.)

De Stefano — Maybe I should keep the guy uptight? Or maybe I should (Inaud. 2 sec.)

Det Leuci — No, No. In the first place, you keep him tighter. You keep him tighter.

De Stefano — Like you're in the way.

Det. Leuci — You're in the way.

De Stefano — ... like if he talks so fast it's not so good. Right?

Det. Leuci — As long as he knows that, and you want to tell him, "look, I want to be your friend, we're buddies and everything but let's jet but lets wait for this thing to go off."

De Stefano — Well I never told him. I never went and told him nothing. It went through a different way.

De Stefano — Like I made one mistake. I'll never make those mistakes again. I did make a mistake you know it and I know it.

Det. Leuci — What mistake?

De Stefano — I made a mistake man, I made a mistake out in Queens.

Det. Leuci — Oh Yeah

De Stefano — Where do I come off like a fucking jerk off doing somebody a fucking favor. What the fuck am I doing?

Det. Leuci — But it worked out. It worked out.

De Stefano — (Inaud. 2 sec.) got that on you fucking mind. I had to be out there something else I did him a fucking favor, I had to be there on something else.

Det. Leuci — For some reason or another this guy appears. I don't know what you've said to him but I'm assuming you must have said something to him.

De Stefano — So?

Det. Leuci — But this guy's not saying anything.

Marcone.

De Stefano — (Inaud. 3 sec.)

Det. Leuci — He ain't saying nothing.

De Stefano — I think he's gonna stand up like a fucking gem.

Det. Leuci — Martinez?

De Stefano — No, Marcone.

Det. Leuci — Oh, Marcone.

De Stefano — I think Marcone, he's of course he's gonna stand up like a champ.

De Stefano — He'll stand up like a fucking champ I mean he wanted to take me to dinner to [illegible] I wouldn't go. I told him I had previous appointment.

DESTEFANO: It gets fucking hot I get more fucking busy here thirty fucking people here.

DET. LEUCI: What ya mean?

DESTEFANO: No I made (inaudible 2 sec.) I got like thirty fucking new cases.

DET. LEUCI: What do you do anyway, Nick I mean what the hell is it?

DESTEFANO: (inaudible 2 sec.)

DET. LEUCI: What kind of cases?

DESTEFANO: People come in with their problems.

DET. LEUCI: I got 15 years in like in two more years I'm gonna quit now join I'm telling ya, between the people I know and the people you know, I'm a little...

DESTEFANO: make a lot of money...

DET. LEUCI: ... smart ya know I'm not a we could do well.

DET. LEUCI: Ya know, Nick, Nick should be doing that.

DESTEFANO: What?

DET. LEUCI: I'd get right out of this job if I had 15 years right out. I'd go right over with you we could do well, and smart you I mean you don't do silly things.

DESTEFANO: I do do a few stupid things, you don't stop to think (inaudible 2 sec.) covered but it's not covered.

DET. LEUCI: Who said this?

DET. LEUCI: (pause 35 sec.) I'm sorry, I told him to meet me here. I forgot about Eddie, is Eddie coming?

DESTEFANO: Yeah.

ms3 SUMMATION OF MR. MORVILLO
(Government)

We are all very much human, we err. But we try to do our best. We try and we hope that in the magic which makes up human beings that in some way there has been impressed upon you, ladies and gentlemen of the jury, the sincerity of all of our efforts to see that justice, justice in the highest sense, is done.

It was once written -- if I can quote it -- I hope that I can -- that the trial of a criminal case is not a game in which the State, the Government should seek to outwit or entrap its quarry; the lawful function of the State is justice, not a victim. Rosner is a victim.

Thank you.

THE COURT: Ladies and gentlemen of the jury, at this time the Court will take its usual ten-minute recess, after which we will hear the summation of Mr. Morvillo.

(Recess.)

THE COURT: Mr. Morvillo.

MR. MORVILLO: May it please the Court, Mr. Krieger, Mr. Sagor, Mr. Feinberg, Mr. Foreman, ladies and gentlemen of the jury:

I, too, at the outset would like to spend just a brief moment thanking you, thanking you for your patience,

for your courtesy, and for your attention during the course of this somewhat prolonged trial. I too quite agree with Mr. Krieger that without people such as you t perform the very, very important function that you do w couldn't operate under this system of Government. You people, and you alone, are the triers and the deciders of the fact here. I recognize that, Mr. Krieger recognizes that, and we both are deeply gracious and express deep gratitude to you for taking your time, for listening to both of us, for listening to all the evidence.

At the outset of my remarks to you I would like to disabuse you of one idea that Mr. Krieger sort of snuck in here during the course of his summation. I think, perhaps, it is the lowest blow in the case; I think perhaps it illustrates or will illustrate to you the desperation that the defense perceives its defense to be in this case. When you are caught, of course, you scream entrapment, and when you are caught you try to confuse the jury or you try to bias or prejudice that jury.

The remark that Mr. Krieger made about Mr. Rosner being a Jewish lawyer and this motivating Detective Leuci to do what he did, testify the way he did, was a low, low remark.

Detective Leuci did not do what he did in this

case because of anti-Semitism; he is not consumed by a filthy hatred. The proof with regard to that is very clear. The other two defendants in this case are named Nicholas DeStefano and Nicholas Lamattina, and they are about as Jewish as I am or Detective Leuci himself.

You see con stant references during the course of this case to people who Detective Leuci was investigating. He was investivating, posing as a corrupt policeman to penetrate the criminal justice system in this town. What religious background, what ethnic background, what nationality a person had made not one whit of difference to him. I submit to you, ladies and gentlemen of the jury, don't be deceived with regard to this; don't be confused; don't go down the wrong avenue, as Mr. Krieger would have you do.

Now, I also agree with Mr. Krieger that this is basically a very simple case. However, one of the difficult parts about this case is that we are really talking about not one case, but six different cases, and to understand this case as it was tried requires some comprehension about the other five cases. And so at the outset of my remarks to you I would like to briefly describe the other four or five cases that are involved here, to put the facts of this case into context, so that

you will understand who the facts of this case relate to the other cases, how the facts of the other cases relate to this case.

This case really has its genesis in October, 1965, when Pedro Hernandez sells narcotics to an undercover agent. Hernandez is apprehended, he is indicted, and he retains Rosner to defend him. The defendant Rosner has testified that he was retained about a week to ten days before the Hernandez case actually went to trial, and whether he is guilty or innocent of any wrongdoing in connection with that case, that issue is not before you, even though Mr. Krieger would like to try that case more than he wants to try this case.

But there are some interesting points which you should know about how Mr. Rosner conducted himself during the course of the Hernandez proceedings, and, indeed, what he testified to from that very witness stand with regard to his activities in that case.

First of all, he was retained in that case a week to ten days before trial, and according to his testimony, never found out what the charges were, never obtained a copy of the indictment. He called the United States Attorney on the case and never bothered to ask him the one key question:

What is the case all about? He was vague as to whether or not he contacted the defense attorney who had represented Hernandez prior to the time that Rosner came in. He said one thing, though, whether he contacted him or whether he didn't contact him, he didn't find out from him what the charges were in the Hernandez case. He didn't. He didn't ask him the one key question:

What is Pedro Hernandez charge with?

Does that sound credible to you? Does that sound credible, a man of Mr. Rosner's experience, who tried hundreds of cases with the Legal Aid Society, so he claims, in his 48-day span? Does that sound credible?

If he did speak to the lawyer, he said the one thing, you know, is that the lawyer never told him that there was going to be an alibi defense in the Hernandez case. And so Mr. Rosner goes to court with regard to the Hernandez case, and lo and behold, when he was given a copy of the indictment he discovers for the very first time that his client is charged with selling narcotics in October of 1965. So he rushes out of the courtroom and he buttonholes his client in the hall and he says, "My goodness, you're charged with selling narcotics in October of 1965."

And just as quickly as that, his client, who up

to that time hadn't told him he was charged with selling narcotics, his client recalls that in October of 1965 on the two dates in question he was in Miami, Florida. Mr. Rosner would have you believe that he looked upon that without skepticism. He simply in good faith took it from there and went on to put in that alibi.

Mr. Rosner didn't fool that jury, either. Mr. Hernandez was convicted. And then the witnesses in that case who put in the phoney alibi, were called before the grand jury. Within a week or two weeks after the Hernandez trial ended in 1967 witnesses were called before the grand jury, Pulido and Beltran.

What does Mr. Rosner do? He represents Pulido and Beltran for nothing, free. What a great work of charity that was. It must have been those 48 days in the Legal Aid Society which caused that to rub off. This is the man who doesn't file the Hernandez brief in the Court of Appeals because he hasn't gotten paid. But he takes his time to advise Pulido and he takes his time to advise Beltran and he takes his time to advise Beltran and he takes his time to come down with them into this very building and appear before the grand jury with them for nothing.

What does he tell them to say? He tells them to say nothing. He tells them to take the Fifth Amendment

before the grand jury. Do you think that was charity on the part of Mr. Rosner? Or do you think he was looking after his own interests in telling the only witnesses available not to tell the true story of the alibi and Rosner's true participation in this case, not to tell the truth.

Then there is the appeal. And the appeal has very, very little relevance to the issues on this trial, except it does demonstrate to you something about Mr. Rosner and something about the way he conducts himself and something about his candidness and truthfulness.

You will recall that Mr. Rosner testified during his direct examination and on cross-examination that the reason he didn't file an appeal was because he had not gotten paid. And then I pulled out the affidavit, his sworn affidavit to the Second Circuit Court of Appeals, the second highest court in the land. I showed him that affidavit. The affidavit didn't say anything about that. The affidavit said something about his being busy and that is why he didn't file the appeal.

I say to you, ladies and gentlemen of the jury, that that affidavit demonstrates conclusively what Rosner's respectfor the truth is. From that affidavit and from the lies he told on this witness stand with regard to that

case and that affidavit you can determine his credibility in this case and you can determine whether or not he was telling you the truth when he told you the underlying facts of that case. That, basically, is case No. 1, the Hernandez case.

Case No. 2 is the Rosner case, the 1970 Rosner case. He was indicted for subornation of perjury. He was indicted for conspiracy to commit perjury. You have that as facts before you. You have the statements before you upon which the indictment was premised. As I say to you, I repeat to you, that case is not in issue. You understand only that there was an indictment and you understand what that indictment was premised upon.

Pulido, Beltran, Hernandez, Mosquera, they didn't testify here, and you have no way of assessing the truth or falsity of those charges.

Mr. Krieger would like to divert you and he would like to talk about that. That case is relevant, those statements are relevant only to show you what Mr. Rosner's motive was for doing what he did in that case.

Case No. 3 and case No. 4 are the Martinez and the Marcone cases. Felix Martinez was another narcotics trafficker. He was arrested in 1970 in Queens for the possession of narcotics. Within four days after his

arrest the case was dismissed. The case was discharged because the narcotics that he supposedly had came back from the police laboratory saying no narcotics. We know from the tape recordings here and from the testimony of Mr. Shaw and people like that what the allegations in the Martinez case were. In other words, the Martinez case was all about how Mr. Martinez got out of jail. We know from the tape recording of September 30 exactly what happened now, because Lamattina and DeStefano state they were involved in it.

What happened was Marcone was contacted by someone representing Martinez and Mrcone went to DeStefano and he said he would like to fix the case. DeStefano went to Lamattina and said, "Can you speak to the cops that made the arrest? We would like to fix the case."

Lamattina went to Bell, Reed and Martinez, the three arresting officers, and made an arrangement with them to fix the case. And then the price is negotiated. Bell, Reed and Martinez settle for twenty-five or thirty thousand dollars.

Lamattina puts on a little more, DeStefano puts on a little more, Marcone puts on more, and the first thing you know, Martinez pays approximately a hundred and

thirty thousand dollars to get his narcotics case fixed.

From the Martinez case stems the Marcone case. And that is when the Federal Government gets wind of what went on out there in Queens. They start an investigation to see whether the case had been fixed, how the case had been fixed, and who fixed it.

And you heard Mr. Shaw testify as to that investigation, that it was an investigation which commenced in the summer of 1971 and went through the fall of 1971, and the person under investigation was Marcone, not Rosner, Marcone.

You know also that Mrs. Martinez testified during the course of those proceedings. Those are cases 3 and 4: Martinez, the underlying fix; Marcone, the investigation into the underlying fix.

Case 6 is the Stewart case. Case 5 is the case in whichGeorge Stewart is another narcotic trafficker. The man is arrested, agrees to cooperate with the Government. You heard Mr. Updike, a former assistant United States Attorney, come in here and tell you all about the case. He said that Stewart cooperated and at one point, in July of '71, Stewart is physically relocated out of New York State, and only a bare minimum of people know about that.

Rosner is Stewart's lawyer and he doesn't know about that. The one thing you can infer, though, Stewart's co-defendants wanted to know about it. They wanted to know where Stewart was. They wanted to know what he was doing. They made some attempts to find out, as we will see when we go into the facts of this case.

Those are the first five cases. What is their status? Let's review for just one second what is their status as of September 30 when this case begins.

The Rosner case is scheduled to be tried on November 1st. The Marcone investigation is actively under consideration by the grand jury. Mrs. Martinez has already

testified. And the Stewart indictment is about to be filed. That is, the case in which Stewart is testifying, is about to be filed. It is filed, as a matter of fact, on October 13.

And at this point Detective Leuci enters the scene. Just a bit of brief background about Detective Leuci.

He is a person who goes to Mr. Scoppetta at the Knapp Commission. He is a person who agrees to cooperate -- not agrees to cooperate, because that seems to insinuate in and of itself that he is working something off, and it is very clear that Detective Leuci is not working anything off. He is a person who agrees to assist Mr. Scoppetta. And when the project seems to be so great that it can't be handled by the Knapp Commission, the project is turned over to the FederalGovernment, a long term project, including many investigations, not just an investigation to ensnare this poor defendant. It is an investigation into the whole criminal justice system in the State of New York. And Detective Leuci has the role, the unenviable role, of posing as a corrupt policeman and dealing with the roughest, vilest types of people and adopting to a certain degree their standards of language and speech.

You saw Detective Leuci on that stand and saw how uncomfortable he was when he had to say those kinds of

words here in court before you members of the jury.

Now, before we get specifically into this case let me just remind you, the Judge will do this in detail, but let me remind you what the charges are here, because we have somehow gotten buried by Mr. Krieger's argument that this case is all about entrapment.

The grand jury charges this man and Nicholas DeStefano and Nicholas Lamattina with conspiracy to obstruct justice, with conspiracy to br ibe, with conspiracy to defraud the Federal Government, with conspiracy to obtain converted documents. They charge that he actually did obstruct justice by obtaining the so-called witness statements, by obtaining the grand jury testimony, and they charge that he participated in the bribery to the extent that he paid money which eventually went to Detective Leuci.

Seven counts in that indictment, charging conspiracy, obstruction of justice and bribery.

How does this case start? Mr. Shaw, the head of the Strike Force, former executive assistant United States Attorney, came in here and told you. He said that he was in charge of the Marcone investigation, not the Rosner investigation, the Marcone investigation. He said he talked to Detective Leuci during the summer, or I guess around late September, of 1971, to find out whether Leuci

could do anything to assist the Federal Government in the Marcone investigation.

And then Leuci testified that after talking to Shaw, on September 28, 1971, he called Lamattina and he said to Lamattina, "Your friends down on Baxter Street have got some problems." He didn't even mention their names. "Your friends down on Baxter Street have got some problems. There is a Federal investigation going on."

And Lamattina, being ready and willing and able and anxious to participate in criminal conduct, said, "Let's get together. Let's get together. Let's have a meeting."

And so we have the meeting of September 30, 1971, a meeting at first between Detective Lamattina and Detective Leuci. The meeting is on tape. There is a transcript of that conversation. If you feel somehow the transcript does not assist you in getting the meaning, the purport, the context of the remarks, you have the right, ladies and gentlemen of the jury, while you are deliberating, to request that the tape recordings be played back to you. And the Court, I am sure, will honor that request.

Leuci goes to the meeting on September 30, and right away Lamattina knows what they are talking about. And they have a brief discussion about the Marcone investigation.

Indeed, Lamattina immediately admits to Leuci that he himself was involved in the Marcone case.

Lamattina brings Marcone and DeStefano to the meeting. No prearrangement for that, but he brings them to the meeting. DeStefano and Marcone, Leuci and Lamattina sit down in Chinatown and they have a discussion about the Marcone case.

Listen to it on the tape. They talk all about the case. They talk about the three policemen. They talk about the $130,000. They talk about the six kilos of narcotics that came back no junk, no narcotics, all about that case. And there is not one single mention of Rosner at the beginning of that meeting. Leuci says nothing about Rosner.

How does Rosner's name get mentioned? After Marcone goes, DeStefano, who is a co-defendant with Rosner in that case and in this case, says to Lamattina, "That Rosner case is very important to me, too. Maybe Leuci can help us with regard to that."

Is that Government initiation? Is that the Government going out and trying to ensnare and entice and seduce somebody? Leuci went to investigate the Marcone case. The subject matter of the Rosner case was not brought up by Leuci. It was brought up by DeStefano.

Now, try as he may, Mr. Krieger cannot put DeStefano at the Government's table. Mr. DeStefano wasn't representing the Federal Government on September 30. Mr. DeStefano was his co-defendant (indicating). Mr. DeStefano had worked for him, had worked with him, Don't lay DeStefano on the Federal Government.

Let's go on. In the September 30th meeting - it is right there in the transcript, it is right in the tape - as the meeting goes on, DeStefano returns to the Rosner case and he says, "I'm interested in the Rosner case. This is something that's gotta be done right now, right now, right away." Those are his very words.

And what does the ensnarer do? What does the entrapper do, Detective Leuci? Does he say, "Yeah, yeah, yeah, let's get Rosner here." No. Read the transcript. Listen to the tapes. He says, "I don't want to deal with Rosner. I don't like lawyers. I don't like Rosner. He's got a crummy reputation."

Is that entrapment? Is that ensnaring? Is that seducing? Is that enticing? No.

Leuci was looking to make his case on Marcone. On September 30th he never said a word about wanting to get in to Rosner. He did everything he could to prevent Rosner from coming. That was not a man who was trying to ensnare

Rosner. That was not a man who was trying to entice Rosner. You read those transcripts. Ask for them. Government Exhibit 25A, the September 30th transcript, will support the Government's contention that Detective Leuci had no feeling to go after Rosner. DeStefano insists on meeting the following night, not Leuci.

Now, probably the most significant part of the September 30th tape is not what's on it but what is not on it. Because the triple-header here that Rosner is talking about in terms of inducement is remand, that he is afraid he is going to be put in jail; murder, that the Government was going to indict him for first degree murder; and his involvement in Marcone. You look at that September 30th tape, and if you can find anything, any one word in that tape which even hints at any of those three ideas, I will be a monkey's uncle.

There is no conversation about remand, there is no conversation about the murder of Hernandez, there is no conversation about Rosner being involved in the Marcone case. There is plenty of conversation about Marcone, but at no point does Detective Leuci even hint that the Federal Government is looking at Rosner. That tape recording supports the theory that no such conversation ever existed, that that triple-header is simply a creation of Rosner, a

figment of his fertile imagination.

Let me ask you something, ladies and gentlemen of the jury. Detective Leuci, would he have been so stupid as to get the thought to Rosner that he was about to be remanded, that he was about to be indicted for first degree murder, and that he was involved in the Marcone case, when he knew that none of those things were true? Because all it took was one phone call, one phone call by Rosner to the U. S. Attorney's office to check that out and Rosner --

MR. KRIEGER: There is no evidence that anything like this could be done, and I object to this statement.

THE COURT: Overruled.

Proceed.

MR. MORVILLO: One phone call Rosner would have made to check out whether or not he was in fact under investigation for murder, whether or not he was about to be remanded on the application of the Government, and whether he was a target of the Marcone investigation, and if that one phone call had been made and the answer would have been no, it would have completely destroyed Detective Leuci's credibility with these crooks. So he couldn't have been that stupid.

Mr. Krieger himself told you that Detective Leuci is a smart man, and I will concede that, a smart and a

brave man. And no smart man would have created three lies to Lawyer Rosner, knowing full well that those three lines could have been exposed on one phone call.

The remand, the murder and the Marcone never happened, ladies and gentlemen of the jury. They are simply an excuse that Rosner wants you to believe because he can't admit up to his own misconduct and he is hiding behind the apron strings of the entrapment defense.

The next meeting is the October 1st meeting. Rosner does not show up. Incidentally, though, Leuci is searched. That is very significant, very significant, because I suggest to you that you can infer from all of the evidence which has come in here that Mr. Rosner is a very clever man, and I suggest to you that one of the reasons he didn't show up on October 1st is he wasn't sure of Leuci. He was getting the information from DeStefano anyhow, so he didn't have to go really. But October 1st is the first time that Leuci is searched, and it is a negative search. Nothing happens. They search him. Of course he is not wearing recording equipment. They couldn't find anything. And October 4th, the next meeting, Rosner shows up.

Is that a man who has been ensnared, enticed, seduced? Or is that a man who is clever, who is cautious, who is not going to go into something until he has got all

the facts checked out?

October 1st, what does Detective Leuci testify happened? They talk about the Marcone case again. DeStefano tells him Rosner is not going to come, thinks he can beat the case, he is not going to be there.

What does Leuci say? Does Leuci say, "Oh, my God. Rosner is not coming. Bring him to the next meeting. You have got to bring him here?" No, he says, "Rosner is not coming? Fine."

Why? Because Detective Leuci' primary purpose was to investigate the Marcone case, not the Rosner case. He could have cared less whether Rosner came or not. If Rosner comes, fine, it is a bonus. Sure he was expecting Rosner to come, because DeStefano had made such a big fuss about it on the 30th.

"Let's meet tomorrow night. I'll get Rosner. I vourch for Rosner. We have been througha lot together." I'll bet they have been through a lot together.

There is discussion about the money, what the Federal contact is going to make. It is clear, it is clear by October 1st that we are talking about a corrupt situation. It is beyond peradventure of a doubt that DeStefano and Lamattina understand and must convey to Rosner that Leuci is a crooked cop.

No remand discussion, no murder discussion, no Marcone discussion. The fountainhead of Rosner's defense never happened.

So we come to the October 4th meeting. The October 4th meeting is a very important meeting. I agree with Mr. Krieger that is an important meeting. And I also agree with what Mr. Krieger said, that if you accept the Government's version of what happened at the October 4th meeting, Rosner has committed a crime.

And that is why Rosner's version of the October 4th meeting is completely different from Leuci's, because he knows that if you accept Detective Leuci's version of the October 4th meeting he wasn't entrapped. He went there ready, willing and able to become part and parcel of a conspiracy to bribe, a conspiracy to obstruct justice, and of bribery and of obstruction and justice.

There is a search on the 4th. Rosner denies it. Leuci affirms it. Rosner asks about the Marcone indictment on the 4th. He tells Leuci what he has learned about the Marcone case. I guess maybe it is a hobby of Rosner to go around collecting information about Government investigations that he is not involved in, because, boy, he knows an awful lot about that Marcone case. It must have been a real coincidence that he bumped into Nigretti, the lawyer for

Mrs. Martinez, right before this meeting. Wow, what a coincidence.

Rosner tells Leuci that there are a lot of people that are going to be indicted in that case. There is Mr. Disinterested talking all about the Marcone case. There is a man who wants nothing to do with Marcone. Yet who initiates that conversation? Who carries that conversation? According to Detective Leuci, it was Rosner.

One of the remarks that Rosner makes to Detective Leuci on that evening again spells out the character of this man, the way he looks at law enforcement. Law enforcement to Edmund Rosner is the enemy. Rosner tells Leuci that when he spoke to Nigretti he asked Nigretti, "Why are you permitting Mrs. Martinez to testify fo rthe Federal Government?" What a wonderful statement for a man who has justice on his mind all the time to talk about? "Why are you permitting Mrs. Martinez to testify in a case involving a fix on a narcotics case for $150,000?"

If that statement alone doesn't tell you something about Edmund Rosner, nothing will.

Rosner brings up the subject of the Rosner case. He brings up the subject of the 3500 material. Now, in assessing the credibility of the witnesses here, in assessing Detective Leuci's credibility, in assessing Mr. Rosner's

credibility, you have got to look at the little things, just tiny, little things that happened during the course of their testimony as a terrific indication to you of who is telling the truth with regard to what.

3500 material is a legal term. I am sure none of you ever heard of 3500 material before you got into that stand unless youhave been on a Federal criminal jury before. It is not a common term bandied about in the streets of New York.

Detective Leuci is a New York City policeman. There is no 3500 material over there. The term 3500 material, as I say, is a lawyer's term. It is not something that Leuci would have used. Yet 3500 material was mentioned, and it was mentioned by Mr. Rosner, and the proof is the use of the term itself.

If Leuci had been describing it, he would have described it as the statements of witnesses, not as 3500 material. Rosner described it. He described it precisely the way a lawyer would describe it: 3500 material.

Those are the kinds of little things that should enable you to dissect the testimony in this case and to discover who is telling the truth. Is Mr. Rosner telling the truth or is Detective Leuci, supported by those tape recordings, telling the truth?

Rosner says, "Don't worry about the 3500 material. Your contact in the Federal Government will know that."

Why does he say that? Isn't Rosner putting a test on Leuci? Isn't he really trying to find out whether Leuci does have a contact in the Federal Government, whether or not Leuci really can go back and do what he says he can? He could have easily have told him, "3500 material is a statement of witnesses." But he doesn't say that. He says, "Go back and your contact will know what it is."

Mr. Rosner is a very clever man, ladies and gentlemen of the jury. He conducted himself throughout these proceedings with shrewdness, with caution, with cleverness. He comes that way on the tape recordings, in the transcripts. Everything he does in this case is carefully thought out, pretested.

He does not act at any time during the course of this proceeding as a man who is ensnared, as a man who is entrapped. Not once does he say anything on any of those tape recordings which would support that theory. Not once does he cry for help. Not onces does he ask to leave. Not once does he say, "Get me out of this. This is dirty, this is vile, I don't want to touch it." Not once does he go to a Federal law enforcement officer and say, "I think there is something wrong here. I think Leuci is a

crooked cop."

Even under his own version, early in the game, when he didn't want to get involved, he didn't come to the Federal Government, he didn't go to Mr. Hogan's office, he didn't go to the Police Commissioner and say, "Leuci is bad, Lamattina is bad." He was eager and ready and willing to participate in this case with Lamattina.

What did he do about Lamattina? The last time, according to him, that he had come across Lamattina, he had accused Lamattina of being a perjurer. Yet ye runs to meetings with Lamattina in this case. Sure, sure.

And wasn't it interestingthat of all the cases that Mr. Rosner ever had, the one case that he reviewed the file on before taking the stand and testifying in this case is the one case he had with Lamattina before this, that Reardon case, that other narcotics case. Doesn't that tell you something about Mr. Rosner?

At that meeting, ladies and gentlemen, Rosner and DeStefano get up and leave the table. That is undisputed. Leuci says that they go some place where he can see them and he sees Rosner hand money to DeStefano, and then when they return to the table the money is given to him. DeStefano holds up four fingers and says, "You got four."

Is there any doubt, is there any doubt in anybody's

mind that Leuci got $400 on that evening? It is here. It is here in court.

You heard one of the surveilling agents testify to the fact that that money was received from Leuci on October 4, 1971. Rosner said it never happened. Where did that money come from? Did Leuci go to the bank beforehand and take out $400 so he could turn it over to Shaw and Scoppetta? Was that what Leuci was doing? Was he just creating the money? That money is very, very significant, ladies and gentlemen. Rosner's got to run away from that money to put in his defense. He knows that. He knows that if on October 4 he would have gotten up on that stand and admitted he gave $400 to Leuci, his entrapment defense goes out the window, it is bye, bye birdie. And so he denies that $400. But it is right here.

You have got to remember that Rosner is a criminal defense lawyer, that Rosner knows entrapment, that he has put entrapment defenses in, he knows the words, he knows the thoughts, he knows the actions, he knows what the Court of Appeals says about entrapment, he knows what the Supreme Court of the United States says about entrapment, and he has colored every bit of his testimony to fit right within the legal definition of that word, because he also knows that is the only defense he has in this case. He was caught

cold. Those tape recordings destroy Rosner. And so he comes back with entrapment.

But he can't tell the whole truth about it, because the whole truth shows he wasn't entrapped ast all. And so he denies that $400. Well, I want to ask you, where did Leuci get that $400 if he didn't get it on October 4th from Rosner, and DeStefano?

Let me ask you another thing. What possible motive -- I listened in vain when Mr. Krieger got up to sum up -- what possible motive does Detective Leuci have to ensnare Rosner and to get up on that stand and lie about it? None has been suggested by the defense counsel, for a very good reason. None existed. None exists to this day.

There is absolutely no reason in the world why Detective Leuci would get on that stand and lie to you about what happened. There is absoutely no reason in the world, after working undercover for 15 months, that Detective Leuci, on a variety of cases, has to single out Edmund Rosner and lie about him, none whatsoever. Leuci has no motive. Does Rosner? Oh, sure, he does. And I will get to that in a few moments.

You also have to remember that according to the defense, as I understand it, this is Leuci's creation. They are not putting this up to Shaw and Scoppetta and people

like that, who are in the background of this investigation, who are instructing Leuci and things like that. They are saying basically that Leuci was fooling both sides. He was lying to Rosner about Marcone, remand and murder and he was also lying to Shaw and Scoppetta about what was actually happening with Rosner.

Nobody, nobody is that smart. Nobody is that venal. Why in the world would a man try to play that kind of a role, lying to the very group of people who were supporting his 15-month undercover project and --

MR. KRIEGER: Objection. There is no such testimony. This is grossly unfair.

THE COURT: I am not aware of any testimonyabout a 15-month period. Please refrain from that.

MR. MORVILLO: All right, your Honor.

The testimony I do believe is a long-term project. Whether it was 15 months or not --

THE COURT: At any event, it is the recollection of the jury that will determine all of the facts.

MR. MORVILLO: Toward the end of the meeting on October 4th Rosner asks Leuci to find out what Mrs. Martinez is going to testify to on the following day. And Mr. Krieger will stand up here all sorts of ways and try to tell you that Rosner has nothing to do with the Marcone

case. And Rosner, himself, has denied that he ever said this on the stand. But the fact of the matter is that Rosner was interested in the Marcone case, that that shows that he was interested in the Marcone case, and he did participate with regard to soliciting information about that Marcone case from the Government.

[Sure, when the money issue comes up later on, he disassociates himself from Marcone. Oh, that's right, that is conceded. He didn't want to pay any money for Marcone.]

But that didn't cut off his interest. He goes to that meeting on the 4th and he talks about Nigretti and he talks about Marcone and he talks about Mrs. Martinez and he wants all the information he can get about that. And unless his hobby is collecting information from secret Government cases, I say to you ladies and gentlemen of the jury, that that evidence conclusively demonstrates that he wnted to know about Marcone.

DeStefano was a subject of the Marcone investigation or should have been, and DeStefano was Rosner's buddy, and you can bet that Rosner was helping his friend DeStefano, who had helped him with regar d to getting an introduction to Leuci. That is why he wanted the Marcone stuff and that is why he took the Marcone stuff.

Now October 6th. Mr. Krieger makes a very big point about the fact that Mr. Rosner doesn't show up for the October 6th meeting. Why? You heard Detective Leuci testify. When he gets on the October 6th meeting, he is practically mugged by DeStefano and Lamattina. There has been a radio broadcast that day, there has been newspaper publicity about a Mr. Dennis Dillon over in the Eastern District who talks about a Federal investigation that sounds very much like the Rosner case. And so everybody is running for cover.

Rosner doesn't show up because he is cautious and clever and shrewd, and he wasn't taking any chances. DeStefano and Lamattina, the fall guys, they go to the meeting.

What does DeStefano say to Leuci? He says to him on October 6th, "If you are cooperating with the Government, some day you are going to have to testify. And when you do, there's no place in the world big enough for you to hide." That he says to the man with the filthy hatred; that is a statement made to scare Detective Leuci to death, and I suggest to you, ladies and gentlemen of the jury, that just going on with this project thereafter and getting on that witness stand and testifying in this case in open court --

MR. KRIEGER: Well, your Honor, that is inappropriate. That is an inappropriate --

THE COURT: I respectfully differ with you.

Overruled, sir.

Go ahead.

MR.MORVILLO: It shows to you that Detective Leuci is a very brave man and is a man that you can trust, he is a man with no malice and no motive to "bury" Posner, he is worried about being buried himself, in a literal sense.

And the conversation on the 6th does turn to similar acts, and it shows you, it shows you conclusively, that Leuci wasn't trying to entrap anybody, because as soon as the subject matter came up he went out and called Scoppetta to find out what he could say properly. Scoppetta is a lawyer, not Leuci.

And then he comes back and as the conversation goes on, he calls Scoppetta again.

Does this sound like a man who is trying to entrap, entice, lure, seduce? No. This sounds like a man who is trying to do everything he can to stay within the law. He understood there was a problem here because the Government was participating in this and he wanted to make darned sure, darned sure, that he wasn't going to do anything wrong.

And so he calls Scoppetta twice during the course

of the 6th.

That in and of itself belies entrapment in this case, ladies and gentlemen of the jury.

It demonstrates to you that Detective Leuci strove not to entrap him, not to entrice him.

Now we come to October 8. Undoubtedly it is clear that Rosner was called by DeStefano on that evening. Nobody is privy to what DeStefano tells Rosner or what does happen after DeStefano is shown the 3500 material by Leuci. It's quite clear that Rosner responds to DeStefano's ph one call and comes to Ruggiero's Restaurant on that evening.

It's quite clear, according to the testimony of Detective Leuci, that Rosner comes in, he goes to the back of the restaurant with DeStefano, there is a brief conversation, they come back to the table and Rosner says, "Everything is all right."

And Leuci says, "What does that mean?"

DeStefano says, "That means you will be paid."

And Leuci says, "Tonight?"

And everybody says, "No, not tonight, you'll have to wait until Monday or Tuesday, because Monday is a holiday."

And Leuci says he and DeStefano then go off, because the one thing that has always been unclear is how much the price is going to be. DeStefano was always attempting to outnegotiate, outmaneuver, be shrewder than Leuci with regard to the money. That is clear. It's clear also that he succeeded, because it's pretty clear that from start to finish that the price here was $4000,

and the actual amount of money paid to Leuci was $2850. That is a game DeStefano won, at least, on a short-term basis, because DeStefano was legally liable, having paid $20, $50, to obtain that type of information. Leuci didn't care whether he got $2800 or $4000; it didn't make any difference to him whatsoever. It makes no legal difference whatsoever.

Leuci and DeStefano go back, they have a short conversation, and DeStefano says, "I want to give part of my share of the money to Lamattina."

DeStefano says, "$500 is due and owing to you coming from me."

And DeStefano asks for the 3500 statements and he receives them right on the spot, because now a price has been made between Leuci and DeStefano.

Now, Rosner will have you believe he comes into this meeting on a phone call of great urge from DeStefano, comes in there, and there are people waving statements around just trying to lure him in right on the end of a fishhook, no doubt. He wants you to believe that a trained undercover agent like Leuci, who was in the process of attempting to make a case for the Federal Government, gives him the statements without arriving or bargaining at a price.

I tell you that is the most absurd contention that one can ever imagine. A trained undercover agent gives up Government documents on a bribery case without settling on a price? That is ridiculous. Rosner gets the 3500 material.

Let me go back to that theme. It's the little things that persons testify to that really matter. Detective Leuci knows that Rosner on the tape recordings is trying to disassociate himself on the Marcone case; it's clear every time the issue of Marcone and the money comes up. Rosner walks about from it, "I don't want to have anything to do with it. I didn't have anything to do with it."

Leuci's testimony, however, is that on the 8th when he first offered the Marcone indictment to Rosner, Rosner rejected it. That is the kind of truthful testimony which he must assess in determining the credibility of Leuci.

Now, that testimony, quite frankly, hurts the Government's theory. It supports Rosner's theory that he was not interested in Marcone. Yet Leuci said it. He said something that would help the defense. Why? Because he is telling the truth. Because he doesn't care how it comes out. The chips will fall where they

may. Either the case is there legally or it is not. But he is going to tell you the way it happened. And if it's a crime, fine: if it is not, fine.

He says first Rosner rejected the Marcone indictment. And I will tell you, ladies and gentlemen of the jury, that has got to have great impact on you, that has to show you Detective Leuci is telling the truth, because if he was trying to bury Rosner, if he is trying to do a job on Rosner, he would never have said that. He would have put in some words like, "Rosner ran for it. Rosner wanted the Marcone indictment and he was happy about it. He asked the questions."

If he was really trying to bury him, that is what he would have said. But he didn't say that, because he was telling you the truth, ladies and gentlemen.

What happened to the Marcone indictment? You heard Shaw testify that it didn't come back with him. It didn't come back with Leuci on the night of October 8t.. Maybe they put some of Ruggiero's marinara sauce on it and Leuci ate it for dessert, because it doesn't show up. And if it doesn't show up, where does it go? Who wants an indictment? Lamattino or DeStefano? They don't know what to do with an indictment. They don't understand the significance, the legal terminology of an

indictment.

Read Government's Exhibit 1. The only person in that room that would have understood what was in there was Edmund Rosner. [And I suggest to you at the end of that meeting he took that indictment, and squirm as he may, he is bound by that. He took it, and that was a crime. And nobody entrapped him into taking that indictment and nobody ensnared him into taking that indictment.]

What about Mosquera and Pudaro, Government's Exhibit 16? Where did Leuci get those names from? The card comes back. Shaw told you he got the card from Leuci. What did Leuci do, go back to his car that night, write a couple of names on a card and bring them back to Shaw?

Why does Mr. Rosner disassociate himself from that card? Why does his recollection get vague? I will tell you why, because he wants you to believe that his head was swimming that night and that he couldn't think clearly and that he was just reacting. But that card shows he was not. That card shows he had the presence of mind after receiving the 3500 material to ask for more information. That man was hungry for information.

That brings us to the meeting of October 12. You know, when Mr. Krieger was talking to you he pretty

much stopped short after October 8. He didn't want to talk about anything after October 8. He tried to explain a little of the really damaging conversations that Rosner had after that, but he didn't talk about how Rosner obtained the grand jury testimony in this case. Why? Because from October 12 on everything is on tape. There is no problem about credibility anymore. It doesn't matter who you believe. It's there. It's there for you to read in black and white and listen to. So Mr. Krieger can't have any arguments as to what happened after October 12, because on October 12 they come back through DeStefano and ask for the grand jury testimony. And the great enticer, the great ensnarer, the great seducer says, "No, that wasn't part of the deal. I won't give you the grand jury testimony. My God, I can't get it. It's going to cost you more money."

He put up every conceivable roadblock to keep them from getting the grand jury testimony. Does that sound like the actions of a man who would ensnare, who would entice, who would entrap? No. That is why you didn't hear any conversation from Mr. Krieger about October 12 through October 19, because those tapes show that Leuci far from ensnaring anybody was retreating with regard to the grand jury testimony; he didn't want to

give that up; he didn't want to give that to them; he was not hanging that, dangling that out there. That is something they wanted. DeStefano initiates it and Leuci says, "You guys are shaking me down." He calls his a shakedown artist. Is that entrapment?

Also, from the 12th, the 13th, the 15th, the 18th, the 19th, all tape recorded conversations. You point to me or have anybody point to me any conversation on those tape recordings about remand. Here is Edmund Rosner worried to death about the Government getting up and moving to remand him some time between October 1st and November 1st, yet not one word, not one word on those tape recordings about remand. Not one. Yet he was so concerned about it it drove him to the meetings. Yet never once does he come back to it on October 13, on October 15, on October 19 and say, "What is the status of that remand? Is the Government going to remand me? Are they going to put me in jail?"

Not one word on the tapes in which Rosner inquires as to what his status is in Marcone. Not one. Yet he wants you to believe that five days prior to that, six days prior to that Leuci was telling him he was involved in the Marcone case. If that was true, wouldn't he ask on the 13th, the 15th, the 19th, about that?

Wouldn't he ask, "How is the Government investigation doing against me in the Marcone case?"

Wouldn't there have been something on those tapes? No. There is no thing on those tapes, and the reason is because it was never discussed. It was never discussed on the 19th, the 15th, the 13th, the 8th or the 4th. It is simply made up by Rosner and it simply made up by him because he wants to get that entrapment defense in here. Boy, if there is a predisposition in this case, it is a predisposition to put in the entrapment defense.

You heard Rosner on the tapes when they talk about the Knapp Commission and they talk about the investigation into narcotics up in Harlem. The very first words out of his mouth are, "Those policemen must have been entrapped."

So to make up a defense, he makes up a defense of entrapment. And what a big coincidence that we have entrapment here. There is no real discussion about the murder of Hernandez, either. The only time it is ever referred to is Leuci says, "I never said that to you. Nothing like that happened. The Government doesn't suggest anything like that."

And Rosner says, "What do you mean you never

talked about it to me? You said I was going to be remanded on account of that."

That conversation is not there, ladies and gentlemen of the jury, and it's not there because it never happened.

On October 13th Rosner shows up. Why does Rosner show up on October 13th? He shows up because Leuci is putting up a front to DeStefano about giving him the grand jury testimony. Leuci is saying, "No, no, no, I don't want to give him the grand jury testimony." So DeStefano needs help and he brings Rosner in to bring more pressure on Leuci. Who is putting pressure on who on the 13th?

Well, one quote I want to read you here on the 13th, and that sums up the whole case and that sums up also why Mr. Krieger didn't talk about the grand jury testimony this morning. Detective Leuci, page 8, Government's Exhibit 27-A in evidence. What does he say?

"All things being equal, personally, I don't know how you feel about this, but personally, you don't have to, you don't have to. You want the grand jury minutes only as icing on the thing for yourself, if you want it you want to spend another $1500, a thousand dollars, to pay for the grand jury minutes, which you really don't

need, I'll leave it up to you. But that's what it's going to be. It's not, what I say, you know."

"Which you really don't need." Is that the great ensnarer? Is that the great entrapper? He is telling Rosner he doesn't need the grand jury testimony. He is not luring him into buying them. He didn't talk about that this morning, did he? He ran away from the 12th, the 13th, the 15th, the 18th and 19th, because that portion of the case conclusively demonstrates that Rosner is a liar and that Leuci is telling the truth with regart to what happened here.

And who puts the pressure on who to get those right away? If Leuci was entrapping someone, wouldn't he say, "I'm going out and get them. YOu stay right here. I will get them."

* It's Rosner who is putting the pressure on, he is the one who is saying, "Got to have them by Friday." He is the one who is keeping the pressure on. The only time Leuci talks about anything at all in terms of pressure is the money, because Rosner doesn't want to pay money. That is clear.

The one thing that is clear in this case is Rosner does not have a hankering to pay a lot of money. He wants that information, that's for sure.

Mr. Krieger used terms this morning about "sickening", things like that, "disgraceful", in his summation. The Stewart situation is indeed one of the most sickening things that one could possibly imagine. What is the Stewart thing all about?

On the 13th, granted in Rosner's absence, the Stewart matter comes up for the first time. It comes up in the context of DeStefano asking Leuci to find out who this Stewart is, where he is, what is his status with the Government. And at the end of that meeting is the most sickening discussion in the whole case.

At the end of that meeting Leuci says to DeStefano, "Now, wait a minute. Wait a minute. If I give you this information about Stewart, is Stewart going to be killed?"

He uses the word "clipped", but I think everybody will acknowlede that "clipped" and "killed" are synonymous. "Is he going to get killed?"

DeStefano says, "He might. He might."

Leuci says, "Wait a minute. I don't want to have anything to do with that. I don't want to have anything to do with that. If I'm going to give you this information you will have to guarantee me that Stewart won't be killed."

DeStefano says, "I can't give you that guarantee." This is Mr. Rosner's former employee, he is Mr. Rosner's co-defendant. If there is anything that will make you sick in this case, ladies and gentlemen, it's that kind of language. And that continues on the 15th.

On the 15th there is a big discussion in front of Mr. Rosner about Stewart. Mr. Krieger makes a big point that Rosner never knew a thing about Stewart. The firstthing that DeStefano says, though, is, "We're talking about Stewart, Eddie, the thing I told you about." Now, I'm not giving an exact quote. But in substance that is what he says.

"No, the thing I told you about. We're talking about Stewart, Eddie."

Did DeStefano and Rosner discuss Stewart before the meeting of the 15th? That sentence gives it away, ladies and gentlemen of the jury, "The thing I told you about."

Of course he did. Of course he did. DeStefano and Rosner discussed it.

And what happens? Rosner's testimony on this is fascinating, absolutely fascinating. On direct examination Rosner says the reason that DeStefano was

interested in Stewart is because of a bail forfeiture investigation, that DeStefano, a legitimate investigator for a bail bonding company, was conducting. You know, when you tell a lie it is hard to remember, because a day later when we got to cross we asked him what was DeStefano doing, he forgot about the bail bonding investigation. He said, "Well, DeStefano was hired by the defense in this case to do an investigation about Stewart."

No talk about a bail bonding investigation on cross. That was after, of course, we point out to him that there had never been a bail forfeiture, never a warrant of arrest for Stewart, so he couldn't peg himself, hang himself on what he said on direct about a bail investigation. So what does he say? "Sure, I knew DeStefano was an investigator for the defense." And the amorality of that man, the amorality of that man to get involved in that situation. Rosner representing Stewart. Rosner is sitting down with the investigator representing the defense and he is trying to find out from a New York City detective that he thinks is corrupt whether or not Stewart is cooperating against that defense. His own client. What amorality. What venality. Can there be anything worse?

And when I asked him if he thought there was anything wrong about that, he said no, he is just doing DeStefano a favor. Sickening. Sickening is the correct choice of words.

And what does Rosner say? What does Rosner say to this disinterested person who is giving public information. What does he say when Leuci says that he had his man over at the Bureau of Narcotics and Dangerous Drugs checking on the status of Stewart and couldn't get any information? What does Rosner say? He says, "Take another peek."

Is that a person who is disinterested in Stewart?

I, too, like Mr. Krieger have overstayed my welcome. I, too, have talked, I think, too long. I will just make two short points, I hope, and let you all go for lunch.

In determining the credibility of witnesses you have to look to a lot of factors. You look to their demeanor on the stand. Who had a better demeanor to you? Detective Leuci or Mr. Rosner? You have to look for corroboration? Whose story was corroborated, Mr. Rosner's or Detective Leuci's? I submit to you that the tape recordings corroborate Detective Leuci up and

down, in and out. Not once, not once did Detective Leuci get caughtin any lie, because he didn't lie. Mr. Krieger -- you have all seen him -- is an expert. He is one of the best there is. Yet he couldn't shake Detective Leuci with regard to his testimony. There was no inconsistency in Detective Leuci's testimony.

Finally, motive. What motive did Detective Leuci have? I have been through that. I don't want to talk to you about it ad nauseam. I simply repeat to you, none.

Did Rosner have a motive? Oh, yes. Oh, yes, every motive in the world. Rosner knows that if he fools you with regard to the issue of entrapment he goes right back to the street to do the same things over again. That is a big motive.

MR. KRIEGER: That certainly is improper comment, if I heard one, your Honor, and I move that it be stricken.

THE COURT: No. Denied.

MR. MORVILLO: In assesssing Rosner's credibility you can look to a lot of things. You can look to Quinones. That is the case in which they talk about fixing a narcotics case to the extent that they are trying to register a person as an informant who does not belong to be an informant. Rosner doesn't leave, he doesn't get up,

he is not repulsed by that kind of thing. He stays there.

You can look at the testimony involving Detective Reed, where DeStefano says to Leuci, "Now, look, if somebody was going to talk to anybody, they would talk to Reed."

Rosner says they were talking about Reed's social personality. You can find that Rosner lied across the board to you and you can find that the lies started within the first three minutes after he took the stand. Mr. Krieger pooh-poohed it this morning, but perhaps the most illustrative thing about what Mr. Rosner was trying to do to you, ladies and gentlemen, was the testimony about the Legal Aid Society. He got on the stand on direct examination in response to a question by Judge Bauman and said he worked for the Legal Aid Society for six months to a year. Why? Why? Because he wanted you to believe that he was on the side of defending the poor, defending the just. And then when we checked up on it we found out that he had been employed for only 48 days.

He backed out of it awfully quick and says it seemed longer. And then it turned out that he had been fired. What was his excuse for being fired? To put the Legal Aid Society on trial. They wanted him to plead innocent men guilty. Isn't that interesting how the

whole word is conspiring against Edmund Rosner -- the Legal Aid Society, Pulido, Beltran, DeStefano, Lamattina, Leuci, the list goes on and on and on.

Ladies and gentlemen of the jury, I submit to you that there is little in the way of any issue of fact for you to decide. I suggest to you that the facts demonstrate overwhelmingly that a crime, a serious crime has been committed here. I suggest to you that the Government has proved beyond a reasonable doubt, beyond any shadow of doubt, that the defendant Rosner is guilty as charged.

I ask you to return the only verdict which is possible under the facts of this case, I ask you to return a verdict of guilty, guilty on all counts.

Thank you.

THE COURT: Ladies and gentlemen of the jury, I am going to permit you to go to lunch now and ask you to be back promptly at 2.30, at which time I shall charge you.

For the last time it is my duty -- but perhaps now more than ever -- to again remind you in order that you not discuss this case amongst yourselves or with anyone else, that you not read any newspaper account of this case, that you not look at or listen to any radio or

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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THE UNITED STATES OF AMERICA

-versus- 72 Crim. 782

EDMUND A. ROSNER, et al.

Defendants.

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New York, N.Y.
May 28, 1974
9:05 a.m.

Before:

Hon. Arnold Bauman,

District Judge.

APPEARANCES:

PAUL J. CURRAN, Esq.
United States Attorney for the
Southern District of New York
By: ELLIOT G. SAGOR, Esq.
JOHN D. GORDAN, III, Esq.
Assistant U. S. Attorneys

ALAN DERSHOWITZ, Esq.
JEANNE BAKER, Esq.
EDWIN J. OPPENHEIMER, Esq.
Attorneys for Defendant ROSNER

(In open court.)

THE CLERK: United States of America against Edmund Rosner. Is the government ready?

MR. SAGOR: Ready for the government, your Honor.

THE CLERK: Is the defendant ready to proceed?

MR. DERSHOWITZ: Ready for Mr. Rosner.

THE COURT: Professor Dershowitz, I believe this is your motion this time.

MR. DERSHOWITZ: Yes, your Honor. Ten weeks ago we filed a motion for a new trial before this Court, and six weeks ago we learned for the first time as a result of newspaper clippings emanating from the lawsuit between the Special Prosecutor and the United States Attorney that Detective Leuci, the government's main witness in the Rosner case, had recanted. Four weeks ago, approximately, Mr. Nadjari brought a lawsuit in this Court and on May 6th, three weeks ago, a hearing was held at which the government represented that Mr. Leuci was in process of being debriefed, in part because of the Rosner new trial motion, in part because of other ongoing investigations.

The government, for reasons which are understandable in light of the Solicitor General's backlog, was about 45 or 50 days late in responding to the petition for a writ of certiorari to the United States Supreme Court, and

finally did so a day or two after Leuci's recantation.

The Solicitor General did not, of course, know about Mr. Leuci's recantation, and so it is perfectly understandable that no mention was made of it in that document. The situation of the Supreme Court --

THE COURT: Professor, is "recantation" quite the word? What he's alleged to have changed his testimony about is not the facts of the case at all, but really about his prior criminal involvement. I am not altogether sure that -- well, go ahead.

MR. DERSHOWITZ: Fine. That was a characterization, it is not essential here. In any event, the petition for the Supreme Court is now in the present situation: the government several days ago filed in the United States Supreme Court a supplemental memorandum to the United States which Mr. Sagor has indicated he received a copy of.

THE COURT: I have read it over the weekend.

MR. ERSHOWITZ: Fine. I was in touch with the Clerk of the United States Supreme Court just the other day, who informed me that the Supreme Court is awaiting our response to thispetition and that if we are able to get our response to this petition in by this coming Friday, as I understand it, we can still have the case on the calendar for this term, that is, the Supreme Court could decide the case

this term which is when it should decide the case in light of the January filing of the petition for writ of certiorari.

THE COURT: It could decide certain things, namely whether to grant certiorari or to return the whole thing here.

MR. DERSHOWITZ: Exactly.

THE COURT: But they are not going to hear and determine.

MR. DERSHOWITZ: No, I didn't mean that. I meant they could simply act on the petition for writ of certiorari. More importantly, if we do not get it in on this Friday, the whole matter will be held over until the October term which means we will not hear anything on the certiorari until probably middle October.

We are very anxious to have the Supreme Court decide the case this term if it is at all possible. We feel that we are in an impossible situation in relationship to the allegations made by the Solicitor General in this petition.

The Solicitor General over and over again characterizes -- you suggested that I characterized it as recantation, and I withdraw my characterization for purposes of this proceeding, but the Solicitor General characterizes the Leuci statements as well. He characterizes them as well

from our point of view in rather weak terms. For example, in the opening of the petition he says, the recent developments suggest that the principal government witness committed perjury at the trial of this case as to collateral matters raised by the defense in an effort to impeach his credibility.

That sentence alone contains several problems. The matters were not raised by the defense, as your Honor recalls, initially they were brought out by the government on direct examination, and of course, pursued by the petitioner on cross-examination as well.

Moreover, from what we have heard represented to this Court by Mr. Curran and by his document, it is more than a mere suggestion, it is a representation that was made to this Court which this Court accepted for purposes of its opinion in the case of the Special Prosecutor that in fact Detective Leuci did make certain statements which indicated that he testified falsely, without regard to whether it was in a material respect or not at the trial.

Moreover, we are told that the -- and here we get into the business of recantation -- we are told in very vague terms that what he did was to admit several more crimes than he had admitted at the earlier trial, but we are not told what the nature of these crimes are, we are not told

whether they are crimes that goes to the essence of credibility or crimes which are on the border of credibility, for example --

THE COURT: How do you extinguish those two? What is the essence of credibility and what is on the border?

MR. DERSHOWITZ: Let me give you an example. This case would be analagous to Mesorosh if it were found that Leuci had repeatedly made false accusations of bribery and obstruction of justice.

In other words, the Solicitor General himself concedes that there would be a big difference if Leuci had admitted certain crimes as distinguished from admitting other crimes.

We are not in a position at this point to know precisely what crimes Leuci admitted. Nor are we in a position to know whether the government has exercised the kind of adversary diligence we would exercise in pursuing questioning of Leuci and in pursuing leads developed from statements made by Detective Leuci.

In other words, we are in position now where we have to accept without question the representations made by the Solicitor General's office which by the way are derivative, the Solicitor General made, as he indicates in his brief, no independent investigation and he simply relied

on, appropriately so, the disclosures made to the U. S. Attorney's office and disclosures made from the U. S. Attorney's office to the Solicitor General's office.

We filed under the principles of Alderman and generally under the view accepted by the Court that defendants need not accept the word of the government, need not accept the government's characterization generally of evidence that may be favorable to the government.

We feel that we need not for purposes of this proceeding before the United States Supreme Court accept the government's characterization, and yet we feel we have no alternative but to do so unless we get access to Detective Leuci ourselves, or at least, the very least, to the documents that have been produced.

Now we are perfectly willing to be bound by any reasonable order of this Court as to confidentiality. We are certainly willing to have the material sealed. We are certainly willing to at this point at least initially have the United States Attorney's office present at any interview we have with Mr. Leuci, although the cases hold that we are ultimately entitled to interview Mr. Leuci outside the presence of the United States Attorney's office, at least if he indicates a willingness to be interviewed.

We have no indication as to whether at this point

Detective Leuci is willing to be interviewed, or is not willing to be interviewed, what conditions he has placed upon these materials. Now, another relevant factor --

THE COURT: Of course, Professor, I don't know any more about what Leuci is saying than you do, to be perfectly frank.

MR. DERSHOWITZ: That's right.

THE COURT: You know precisely as much about what Leuci is talking about as I, because I am sure you have read the same papers.

MR. DERSHOWITZ: Right. The important information, of course, is that the United States Government knows considerably more and they have been able to pick and choose what to present to the United States Supreme Court without any even implicit assumption of bad faith, which I'm not making. It seems to me that when one adversary to a proceeding, to a lawsuit, has the power to characterize the statements that it has that simply is unfair, and I suggest again by looking at the Solicitor General's office it has already unfairly characterized these representations by talking about suggestions, by talking about -- raised by the defense.

Now, there is one matter also that I think is rather important. In the early part of this case your Honor will recall that it became known that Detective Leuci

had made several hours of tape recordings with Mr. Scapetta, that were then returned to Detective Leuci and ultimately presumably were destroyed, in which he made various admissions of criminal conduct.

We of course don't know what was in that tape, particularly in light of the recent developments we don't know whether or not there were any clues in that original tape as to what ultimately was admitted by Detective Leuci. As a result of those tapes --

THE COURT: You mean about collateral acts of his short involvement in crimes having nothing to do with this.

MR. DERSHOWITZ: We don't know whether they have nothing to do with this. All we know is that at the pre-trial hearing before the second Rosner trial a reconstruction was attempted as to what he admitted at those trials and in those tapes and in that reconstruction we learned only about these four minor claims all predating the cooperation. Whether --

THE COURT: By no means minor, Professor, as I remember. By no means minor.

MR. DERSHOWITZ: Well, minor in the sense of the theory of defense in this case, that is, they predated the cooperation, as I think your Honor has even mentioned in his

brief, they predated the cooperation and they were much more difficult to tie into the theory of the defense as to the motivation of the defendant.

Now, as a result of those tapes being destroyed, as I recall it, and as I read the record, what happened was an interview was granted at that time pretrial to defense attorneys in the presence of Mr. Scapetta and government attorneys whereby the defense was entitled to interview Leuci in detail before trial to try to reconstruct those tapes. And at that interview it is clear beyond any dispute that Detective Leuci lied, that is he, in the most unequivocal terms denied his involvement in further actions.

It seems at this point for purposes of symmetry and parallelism it is essential that that opportunity for interview be duplicated prior to the date of a new trial. That is another --

THE COURT: Well, it would be symmetrical, but I am not altogether sure that it is required to be done. I am not sure that symmetry determines the decision.

MR. DERSHOWITZ: No, no. We wouldn't argue that symmetry alone does, but that considerations of fairness. Moreover, the case law --

THE COURT: Let me ask you this, Professor, let's get right down to things. You have a motion pending in the

Supreme Court -- or, you have an appeal pending in the Supreme Court of the United States.

MR. DERSHOWITZ: Right.

THE COURT: In substance you are saying that we all know that Leuci lied at the trial when he limited his conversations about previous criminal involvement to the three or four instances he talked about. You are saying that all that is before the Supreme Court at the present time with respect to that is just that bald statement and nothing more, and you are saying in substance that the Supreme Court can't rule appropriately unless it has more detail than just that all-encompassing sentence; is that not substantially correct?

MR. DERSHOWITZ: Well, that's one way of putting it. From the perspective of the Court that it can't rule without having more detail. Our main point is that we are placed in the unfair position as attorneys for the defendant in not being able to characterize the nature of the Leuci statement appropriately.

For example, right at the opening we called it a recantation, your Honor said it was something other than that. On the basis of the evidence we now have I think your Honor is probably right. It seems to be something other than a recantation. But we haven't had access to that documentation.

THE COURT: Let me hear what the government wants to say. Have you finished?

MR. DERSHOWITZ: I have finished on this stage, your Honor.

THE COURT: Go ahead, take your time.

MR. DERSHOWITZ: I simply want to bring the Court's attention to several cases which I think are relevant, although I will acknowledge are not dispositive.

There is developing case law throughout the federal court indicating that the defendant should have access to interview witnesses, particularly witnesses who are in federal protective custody, untrammeled by the government.

THE COURT: I don't think there is any question about that, and of course, in connection with the motion for a new trial, I mean Leuci will be produced and we can worry later about whether or not you will get to see Leuci before he is produced at the hearing. Frankly, my own view is, and I don't mind stating it, it always has been, that nobody owns a particular witness. However, at this investigative stage of the proceeding there are considerations which limit that for the time being, but at or about the time of a hearing, or in connection with the trial, I have universally said before coming here when I used to occasionally lecture

courses at the P.L.I. that the government doesn't own witnesses, and there is nothing the matter with defense counsel seeing so-called, so-called government witnesses. And that is my general feeling. However, you of course may want to see Leuci before he takes the stand in connection with any hearing that I hold.

On the other hand, you are now in a position where you have got an appeal pending, or a petition for certiorari in the Supreme Court of the United States. It is difficult to understand the applicability of the case law which you probably mentioned. I mean, you probably stated to this peculiar situation. What you are talking about, of course, and what I agree with, is in connection with trials, in connection with hearings, in connections with times when the fellow is going to testify. The adversary should have a chance to interview him and prepare for the combat.

MR. DERSHOWITZ: I agree with your characterization completely. This is a very unique case. There are several cases like it. Of course the measure of the case is much like it. And the Solicitor General itself in the brief talks about the Mesorosh approach and the Mesorosh principle and says, if the Supreme Court were to follow the Mesorosh procedure and itself pass on the procedure of a new trial question, then it would like an opportunity to present more

evidence. The Solicitor General is trying to do --

THE COURT: I thought that was a rather namby-pamby brief, to be perfectly frank with you.

MR. DERSHOWITZ: I appreciate that. The Solicitor General, however, has placed itself in the following situation: it said to the Supreme Court, look, if you are thinking at all about adopting the Mesorosh principle and would consider remanding this case, or would consider a new trial motion, then we want to have an opportunity to really tell you what Leuci said, suggesting that there is a lot more that they can tell to strengthen their case.

We, however, are put in the position of having a one-shot opportunity at the Supreme Court. We have to by tomorrow or the day after tomorrow, write and file a brief telling the Supreme Court everything we have, and at the moment, if our motion is denied, we can tell the Supreme Court nothing except we can argue, of course, that we don't accept the characterization of the Solicitor General, we don't know what the facts are, and we will hope that the Supreme Court would give us an opportunity, or perhaps order the production of Leuci.

But I think we are being put by the Solicitor General and by the government in a terribly unfair situation in relation to what representation we can make.

Now, if your Honor states and entirely correctly that this would be different if this were pending on a new trial motion, my own answer is that the Supreme Court has said that it has jurisdiction to pass on new trial motions.

THE COURT: I wish they would.

MR. DERSHOWITZ: I think we all join that. Then the only thing we are asking this Court for at this point is this Court in aid of the jurisdiction both of this Court and of the Supreme Court under the all writs section of 28 U.S.C. if necessary and the general subpoena power that it order the production of Officer Leuci so that we can have an in camera completely sealed interview and represent to the Supreme Court by sealed letter, if necessary, by jointly sealed letter, if necessary, with the United States Attorney's office what it is he said. Not necessarily in the specifics.

It might be that after a half hour interview, or a several hour interview, we could say, yes, the government's representations are proper, we join the government, that's all we know at this point is that he denied several crimes. But unless we get an opportunity to do that, it seems to me we are being put into a situation where the Solicitor General has the opportunity to disclose as much as he wants in the stages it wishes to do so, whereas we are put in the position

where we have to make virtually no additional representation to the Supreme Court at this point.

THE COURT: All right, I will hear from the government.

MR. SAGOR: Yes, your Honor. Your Honor, the government's position is set forth in the Solicitor's memorandum.

First of all, they know the position we take it today, which I will state for the record, we oppose at this time forcing Leuci to be available. Leuci does not want to speak to any counsel for the defendant Rosner at this time. And also --

THE COURT: Is that your representation to the Court?

MR. SAGOR: Yes, your Honor.

THE COURT: That you have discussed this with --

MR. SAGOR: I asked him and told him he is free to do so or not to do so, it has to be his decision.

THE COURT: Is that what you said to him?

MR. SAGOR: Yes, your Honor.

THE COURT: And he said he declined to talk with Mr. Rosner's lawyers?

MR. SAGOR: Your Honor, in the words of today, "expletive deleted."

THE COURT: Let's put right on the record what he said.

MR. SAGOR: Yes, your Honor. He declined to speak to the Rosners at this time. The lawyer for the Rosners or the defendant himself. Any of the lawyers.

THE COURT: All right.

MR. SAGOR: Furthermore, your Honor, the government opposes turning over the, so far, the debriefing information from Detective Leuci at this time.

THE COURT: Let me stop you right there and ask you this: I frankly have no intention of asking particularly in light of Leuci's statement that he refuses to be interviewed by these people, I have no intention of requiring that you produce him. However, by now, Mr. Leuci has been in your company for some substantial number of weeks and I would think that the government by now must have some idea as to the nature and extent of his criminal involvement beyond that which was asserted at the trial, and some of it I am certain may be the subject of ongoing investigations and prospective cases, but other of it, it seems to me, might be properly disclosable so that these people can have their day in the Supreme Court.

In other words, I really feel that the defendant in this case, or, in any case for that matter, I can't say

that I have dealt particularly gently with Mr. Rosner when he was before me, is entitled to have more than this kind of general, if I may be permitted the expression, claptrap. I mean, he is entitled to know a little more than that about the scope of Leuci's prior criminal involvement, and without naming names, the nature of Leuci's prior criminal involvement.

For instance, has Leuci admitted that he was selling narcotics? Things of that kind. I don't have to spell it out for you. Now, sooner or later he is going to be on the stand and he is going to be regurgitating all this stuff anyhow. So why can you not tell him that which is not confidential -- I mean, that which is not confidential in the sense that it is not involved in ongoing investigations? Have I made myself perfectly clear?

MR. SAGOR: Yes, your Honor. My response has to be guarded, not being privy to the information that Leuci is being debriefed about. The government has represented that some of it is the subject of a grand jury investigation--

THE COURT: I know that. I know that. Mr. Curran argued that, I guess, in connection with Nadjari against Curran. There has got to be more that isn't.

MR. SAGOR: Let me also indicate, your Honor, as your Honor remembers that on May 6th your Honor specifically denied, specifically denied the instant application. Your

Honor will specifically remember that Mr. Dershowitz asked your Honor for the specifics, or some information concerning the Leuci debriefing, and your Honor denied it indicating at this point that all your Honor wanted to do is have the Solicitor General briefed by the United States Attorney, and the United States Attorney had spoken to --

THE COURT: I am aware that this application has been previously made. I remember Professor Dershowitz standing up during the Nadjari v. Curran thing, and I thought, my recollection was, in substance, that he asserted his position, but I have no recollection of having considered it and ruled on it.

MR. SAGOR: I think you did, your Honor.

THE COURT: If I did, I'm going to grant his application for reargument.

MR. SAGOR: All I wanted to indicate that for, your Honor, is the time need of Professor Dershowitz is by Friday. He knew that his application was denied back on May 6th to have any of the specifics of Leuci's recent admissions of greater criminal conduct.

THE COURT: Now, I am not sure I even want you to tell him specific cases, but I do want you to tell him what the nature of Leuci's criminal activities has been in those cases not under grand jury investigation so the Supreme

Court of the United States for whatever purpose, or at least so that Professor Dershowitz can use before the Supreme Court for whatever legitimate defense purpose that kind of information. And I really don't see how it prejudices the government in any way.

In other words, if there has to be a new trial here, so be it. We followed the law, and we will follow the law. I don't see holding back or playing word games, and I'm not accusing the government of anything improper, because I think their conduct here as always has been first-rate and totally ethical.

But I really feel that he is entitled to have some general picture of what we are talking about here.

MR. SAGOR: Your Honor, it is the Solicitor General's view that the Supreme Court is not the appropriate body to get allegations of misconduct on Detective Leuci.

THE COURT: Then they will decide that.

MR. SAGOR: That is precisely right, your Honor. Since May 6th they have had an opportunity to decide, the Solicitor supports the government's position that it has made sufficient disclosure just to correct almost a footnote in the government's brief in opposition which is to the effect that the record in the case revealed no evidence of misconduct. That was an absolutely correct statement --

THE COURT: Look, I respect the Solicitor General of the United States, whoever he may be, as the holder of a high and terribly important office, and I respect this Solicitor General of the United States, but his views don't govern me.

MR. SAGOR: Absolutely, your Honor, we know that his views don't govern you. But the reason for the Solicitor making the statement to the Court was to bring the Court up to date on recent developments, not because there was really any misstatement in the government's brief in opposition to the petition for a certiorari, and it is the position of the Solicitor obviously not governing on your Honor, but obviously representing the United States and the Supreme Court that at this juncture the Supreme Court is the in appropriate place to do it, and there need not be further disclosure.

THE COURT: Mr. Sagor, that is what he says. But I am saying, I am saying that I want them to know more about--not the specifics, not the names, dates, times and places, but the areas he is talking about which tend to show that he lied when he testified on the witness stand before me.

Now, that I will order if necessary.

MR. SAGOR: Your Honor, you know we of course will comply with any of your Honor's orders, but the Supreme Court --

THE COURT: Yes, Mr. Nadjari is in the Court of Appeals in the next hour for reasons of differing with an opinion of mine.

MR. SAGOR: I won't comment further on that. But the Supreme Court has not asked for it, your Honor, we think it would be inimicable. Let me hand up again something of that order, your Honor may have taken notice of the May 22nd, 1974 article in the Times, "Detective in Bronx apparent suicide is linked to Leuci."

THE COURT: I have read that.

MR. SAGOR: Any disclosure, it seems to me, may well -- and I can't talk to your Honor, Mr. Curran wanted to be available today, he wanted to call, he wanted to indicate his apology to the Court, of not being briefed on the specifics or the general nature. I can make a stronger argument --

THE COURT: Well, it doesn't make any difference if Mr. Curran were here. The fact of the matter is that the question presented doesn't differ no matter who argues it; the fact of the matter is I think he is entitled to know so much about the areas as will not reveal the specifics or endanger people's lives.

Mr. Sagor, you are a prosecutor of experience and you know precisely what I'm talking about.

MR. SAGOR: I was going to do that to you, your Honor. What I wanted to make is an example. For example, if a general statement was made, an admission that Leuci has admitted X, Y, Z, I don't know, that may be a bellweather or telltale to someone what information Leuci may be admitting to which may be inimicable to the secrecy of the investigation so far.

THE COURT: Do you mean to say that if you put down on a piece of paper that Leuci has admitted selling narcotics that that would trigger a series of murders? I don't believe it.

MR. SAGOR: I don't know, your Honor. I just can't know without knowing the details, but there are some possibilities in here that even the general nature of what he has admitted to may affect the ongoing investigation.

Of course, we can respond immediately today by letter to your Honor's requests to see if that could be or to see if it can't be by letter form.

THE COURT: I will take the responsibility. If you want to write me a letter I will read it and decide whether or not, or what part of it ought to be disclosed to the defendant. But couch it in general terms, please, because I don't know and I don't want to know the specifics of what Leuci is talking about. Until I hear it on the witness stand.

Now I think what I have said is clear, isn't it, Mr. Sagor?

MR. SAGOR: Yes, your Honor, we will comply with your Honor's direction.

THE COURT: All right.

Yes, Professor, was there something you wanted to say?

MR. DERSHOWITZ: Yes, your Honor. Just two or three other matters, if I could, related to this Meshorosh--

THE COURT: You keep talking about that Mesorosh case which was a case, as I gather, where the collateral, so-called collateral acts were of an identical nature with the act about which he was testifying.

MR. DERSHOWITZ: That's true. In the Mesorosh case, however, the government did not acknowledge, in fact specifically disputed that the matter was perjurious. They said that we have information that he had testified at other proceedings, administrative proceedings, and he may have testified improperly either as a result of mismemory, as a result of mental illness, or possibly as a result of perjury.

The government took the position in that case vehemently that he had not committed perjury at the criminal trial of Mesorosh. Nonetheless, the Supreme Court did two things, and it is the first thing that they did which I think

is most important and which Mr. Sagor missed. They said, it is absolutely obligatory on the Solicitor General to bring all matters immediately to the attention of the Supreme Court realting to possible governmental perjury in a case pending on certiorari.

That is the Solicitor General's obligation in this case was not triggered by the footnote, even if that footnote hadn't existed in its brief it would have been under an obligation pursuant to Mesorosh to bring to the attention of the Supreme Court not the most general but more specific information.

In Mesorosh if you look at the Solicitor General's memorandum, which I have done, it was very specific. It detailed in each case what trial he had testified at, what the nature of his improper testimony was and what evidence the government had indicating that the trial information was improper.

It was then that the Supreme Court had an opportunity to reverse the --

THE COURT: Yes, but in that case he had tetrified at all these trials. Here you have an utterly different situation where the prosecutor is in the middle of an investigation, a prosecutive investigation, and search, and you are not confronted with the Mesorosh situation at all.

In other words, a prosecutor has to be able to function and to perform his investigative function without being impeded by the Court, if that is possible, and I certainly do not intend to impede the prosecutor in his investigation of Leuci's new statements.

On the other hand, what I am trying to do is to strike a balance here between your requirements and their requirements, and that is about as far as I am prepared to go.

MR. DERSHOWITZ: The problem with the balance, which we certainly appreciate, is that by denying - it really depends on how the balance is struck, to be candid. If the balance is struck in a way to give us a general sense of what Leuci has admitted he has done and some opportunity to pursue some leads to see whether we could confirm it or corroborate it, we will be satisfied. We are obviously not interested in the kind of detail that a prosecutor is interested in in going forward and making his case. And if the government were to produce enough specifics for us to be able to make a representation to the Supreme Court and characterization, we would be satisfied.

THE COURT: I am not going to require the government to allege specifics. I have indicated that they need not go into names, dates, times and places at all.

Because I really don't feel that that is necessary to the Supreme Court to know and evaluate the case in making its judgment.

MR. DERSHOWITZ: I understand that, your Honor. The government has represented before this Court, and again I have always accepted representations of the United States Attorney's office, that Leuci has at this point indicated he declines to speak to Rosner. We would like to ask the government --

THE COURT: Or his lawyers.

MR. DERSHOWITZ: Or his lawyers. We would like to ask the government through this Court whether or not it has advised Leuci as to whether or not it has advised Leuci as to whether or not he should speak to us. Whether or not they have in any way given him advice as to whether or not he should speak, or whether the statement was made in the context of an absolutely neutral request saying, you know, you have an opportunity to speak to Rosner's lawyers; if you would like to, that's fine; if you wouldn't like to, that's fine too.

THE COURT: I decline to put the question.

MR. DERSHOWITZ: Let me cite a case on authority for that question. Gregory versus United States, 369 Fed 2d 185 holds that to the government, it is improper for the

government to advise the witness in its custody not to speak to the witnesses for the other side, that the decision must be an entirely mutual and untrammeled one.

There was, after all, no lawyer-client privilege between the United States Government and Robert Leuci. The United States Government is not Robert Leuci's laywer.

THE COURT: Well, at the present time he isn't yet a witness. However, I decline to put the question to the government.

MR. DERSHOWITZ: And finally it seems to me that at the very least the government should give us some indication as to the nature of the length of its debriefing that is going on at this point.

THE COURT: Well, I am kind of curious about that myself.

How much longer is that apt to happen in terms of my scheduling hearings in this matter?

MR. SAGOR: I think the scheduling of the hearing, your Honor, would take place, if there is a denial of cert, as far as the specific position requested by Mr. Dershowitz. They said the government's position was absurd to have a hearing until the certiorari decision was denied, and that is the government's position that when this hearing in the case which I anticipate the Supreme Court

would take several months, of course I just don't know when investigations concerning documents will be finished. The matters are in the grand jury now, and that takes a while.

THE COURT: I want to make a small wager with you, Mr. Sagor. I will wager with you that the Court of Appeals in one hour is going to be asking you or rather represents the government, how long you intend to keep him from Mr. Nadjari. Now, I want to know how long the debriefing will take.

MR. SAGOR: Of Detective Leuci.

THE COURT: Yes.

MR. SAGOR: I don't know the answer to that, your Honor. I think there are things happening in the Court of Appeals, or in that case at the present moment, and it is in a state of flux. There were things as I left Mr. Curran on Friday that indicated some state of flux, and I cannot make a statement for the record. I do know that when your Honor orders the hearing to go forward in this case, we are going to go forward. I have no illusions about that, regardless of where the Leuci investigation is; I think that at some point a hearing like that takes precedence over other matters and I know your Honor's direction would be complied with.

THE COURT: Well, actually the case is not in my

court physically, not in my court which is why I have not set a hearing so far.

MR. SAGOR: That is correct, your Honor. And you stated that on the record before Mr. Nadjari that the hearing is not before your Honor and your Honor indicated if one read between the lines that as soon as the Supreme Court moved we would move with all deliberate speed.

THE COURT: When the case is back in this court.

MR. SAGOR: That's right.

THE COURT: Yes.

MR. DERSHOWITZ: May I speak to that issue, your Honor?

THE COURT: Yes, of course.

MR. DERSHOWITZ: I think Mr. Sagor has completely mischaracterized the state of the record on that. As I recall it on about December 18th or 20th he wrote me a letter insisting that we file our new trial motion at that point. Even though we had pending in the Supreme Court, or were about to have pending in the Supreme Court at that point a petition for writ of certiorari.

In answer to that insistent demand we in fact filed our motion for a new trial while the petition for certiorari was pending. My recollection at that point is that the government then responded and we received a notification from

your Honor's office indicating that a preliminary hearing, or conference --

THE COURT: I was going to do something about that until it occurred to me that the case is not in my court at the present time. Physically.

MR. DERSHOWITZ: Well, I think, your Honor, that the rule is as follows --

THE COURT: I can hold a hearing if I want to. And I believe I could deny the motion if I held such a hearing. But before I could grant a motion I think it would be necessary for the order on mandate, or whatever the case, be returned to this court. The case is not in this court now.

MR. DERSHOWITZ: Well, the practice in this kind of case, and I have to admit I have only been able to find seven or eight of them, but in every single case of this kind the practice has been as follows, and I read to you from a recent case called United States versus Smith, 433 Fed 2nd 149, when a motion for a new trial is made while the case is on appeal the motion in substance is one calling for the District Court to make a determination of whether it should advise the appellate court that it is disposed to grant the motion for a new trial.

In other words, the better procedure accepted by

the commentators and by the cases is as follows: if we file a motion for a new trial, and if it calls for a hearing, there should be an immediate hearing to preserve --

THE COURT: I will read that case, Professor.

MR. DERSHOWITZ: There are a series of others I can recite. Knight versus United States, 213 Fed 2d 99, I think it is Parker versus United States, 163 Fed 2nd 771, and various references in Moore's Criminal Procedure and others which suggests that the best procedure is that an immediate hearing be held so that the evidence not go stale and not disappear.

THE COURT: Well, I will consider those cases.

MR. DERSHOWITZ: And the death of Detective Cody is a knife that cuts both ways. Detective Cody was a possible witness for us to corroborate Leuci's criminal involvement, and he is no longer with us, unfortunately, and we are very concerned about the developments which would make a hearing at this point imperative, and so it is our request formally and on the record that an immediate hearing be held on the motion for a new trial, and that if this Court is disposed to grant that motion it send a certificate to the United States Supreme Court indicating its disposition. The United States Supreme Court will then remand the case to the District Court for entry of a judgment of new trial.

If this Court is disposed not to grant the motion for a new trial, it should also so indicate to the Supreme Court, which would then pass on the motion or not pass on the motion. But consideration is of judicial restraint obviously require, it seems to me, that the motion be decided at the lowest possible court, with all due respect to the dignity of this Court. That it be decided at this court, if possible, the appellate court, if necessary, and the Supreme Court if absolutely necessary, and for that reason we ask that a hearing be held immediately.

After all, we filed our motion for a new trial, it is now ten weeks ago. The considerations that militate --

THE COURT: I gather that motion was what triggered the whole thing.

MR. DERSHOWITZ: We gathered that as well, although it is the government's official position that the two have had nothing to do with each other.

THE COURT: Oh, really? All right.

MR. DERSHOWITZ: And we, at a hearing, we have some evidence which suggests that that may not entirely be correct, and that the government may have had evidence of Leuci's prior criminal involvement before the 17th, but that is a matter for another day.

THE COURT: Well, I will hear the government with

respect to the motion that has just been made for an immediate hearing on this -- on the motion for a new trial which I have been kicking around now for a very long time.

MR. SAGOR: Your Honor, it is true, as Mr. Dershowitz says, that the government asked for him to put in allegations before the District Court in the form of a petition.

One of the motivating reasons was not to have an instant hearing on it, but to have Mr. Dershowitz desist from phone calls to the government where there is confusion on the record of what he is asking for and what he is not asking for. The government felt that any discovery that he may or may not be entitled to should be in the form of a motion, hence our letter to him that at least he should put his allegations in the form of a motion and at some point the District Court could grant or deny a motion.

Your Honor, defendant's response to that was in their memorandum in opposition, page 2, saying, characterizing an instant hearing on the case as an absurdity, that their position was at that time that the Supreme Court should first rule on the petition, and I think that just recent events have changed that. We oppose having an instant hearing because the issues have not yet been fully coalesced. If we have an instant hearing and the government

prevails, then they go on and get further allegations something further from Mr. Lawrence and the Baron, we ought to have a hearing on this which disposes of this one way or another, of all the allegations.

The government's position is that it is not at all ripe yet to have ultimate decision. I don't want to say that for example as an argument at the time of the hearing, your Honor, this matter is under grand jury investigation. We would like to have all things completed by the time of the hearing, and we are rushing to do that, obviously. So that your Honor could finally decide one way or the other concerning these allegations.

We would not be ready, frankly, by next Monday, or the week after, to have a hearing on this issue. And it is silly to go off half-cocked. If the Supreme Court wanted it, they could send it back to the District Court for a hearing, then our position may be undercut somewhat as a matter of timing. But right now the government's position, both in the Solicitor's office and this office, is that the Supreme Court should pass upon the issues raised by the petition for certiorari.

THE COURT: I'm a little troubled, Professor, by the fact that if I have made the errors that you claim I have, then the Supreme Court is going to reverse it and

send it back anyhow. So why go through the agony of this hearing meanwhile?

MR. DERSHOWITZ: Well, it seems to me that that looks at it from the point of view of judicial timing of this court rather than Supreme Court, that is the general rule is that the Supreme Court, it's far more important that the Supreme Court not pass on issues unnecessarily because of the precedential value throughout this country, that if any court is going to pass on an issue it better be the District Court, after all we have raised some rather fundamental questions not about errors made in this Court specifically but about points of law which we hope the Supreme Court will adopt.

Frankly, the likelihood of the petition for certiorari in any case is not a very great one. Those are always very difficult petitions to get achieved. In this case, of course, the Solicitor General has said that it would not object to the certiorari petition being granted for purposes of remand, but it seems to me that considerations of judicial economy require that this Court save the Supreme Court the necessity of passing on the case if it is at all possible to do so.

THE COURT: How long do you anticipate a hearing in this matter would take?

MR. DERSHOWITZ: I think just several days at the very most. I am not frankly experienced in the conduct of hearings of this kind.

THE COURT: You are doing fine.

MR. DERSHOWITZ: Thank you.

But I would imagine not very long. We would anticipate calling Detective Leuci -- by the way, it is interesting, your Honor, to note in light of the government's statement why it did not include an affidavit of Detective Leuci in response to our very serious charges emanating from the Baron -- what is his name again? Richard Lawrence -- the undercover informant. I was very surprised that the government in all its answering papers failed to produce a denying affidavit by Leuci.

Now, unless the government has some doubts about Leuci's credibility even at that point, doubts that they never informed the defense about, it seems to me the most natural thing in the world would have been to have produced an affidavit by Leuci denying those charges, and yet they never did that in all their papers.

But we would plan to call Detective Leuci as our witness, even if the government didn't plan to call him as their witness.

THE COURT: Why can't I hold a hearing on

July 1st in this case?

MR. SAGOR: Your Honor, one should realize too, that there is not a case before the Supreme Court, there is a petition. It is not to say that nine justices are going to be sitting in the conference room and deciding on a case. Right now, all there is --

THE COURT: Nine law clerks will at this time.

MR. SAGOR: A team. Right now only a petition is before the Supreme Court and the government would just not be ready to put Detective Leuci on the stand if he is not finished finally debriefing on the matter.

THE COURT: By July 1st?

MR. SAGOR: B y July 1st even. We want to be sure, your Honor, that we have everything so that we can make the statement to the Court so this thing does not linger, because someone remembered one more possible thing as opposed to whatever the number is.

MR. DERSHOWITZ: Your Honor, it seems to me there are many occasions when exigencies of prosecutorial life make it clear that they cannot produce Leuci. We are not even requiring them to produce Leuci, there is another alternative. The other alternative is the one suggested by Judge Gissell's opinion in Coulson and Ehrlichman versus the United States, and one that has been suggested throughout

history by all courts.

If the government cannot produce the witness it should simply consent to the granting of a new trial. Then they will have plenty of opportunity to have a new trial to debrief Leuci, to determine whether or not he is available as a witness at a new trial, but the government simply can't have it both ways.

If the exigencies of prosecutorial life require that they keep him and not disclose him, the alternative is obvious. It is merely the fleeing of one possibly arguably guilty defendant and that in the American scheme of things has never been regarded as a major tragedy.

THE COURT: I suppose it is possible that he was engaged in so many acts of a criminal nature that it is going to take him two months to tell the prosecutor that.

MR. SAGOR: Your Honor, I'm not telling the Court that it is going to take 24 hours a day for the next month, but after there is some disclosure it does require some further investigation, obviously, and obviously it has been Mr. Rosner's position that he has investigators going out on this and continuing to go out, he is not going to necessarily be finished on June 1, either finally in this matter.

THE COURT: Well, it sounds to me like the possibility exists where he may never be finally ready.

MR. SAGOR: That's correct, your Honor.

THE COURT: I am not going to wait that long. July 1. I will hear an application, but it better be on a very good cause as to why I should not hold a hearing on July 1. July 1.

Now, with respect to the matter we have talked about this morning, I take it you are going to submit a letter to me.

MR. SAGOR: Yes, your Honor.

THE COURT: And I shall decide whether or not I am to turn that over to the defense.

MR. SAGOR: How much of it or what part, if any.

THE COURT: Yes. What time do you anticipate I would have that?

MR. SAGOR: I would have to consult with the United States Attorney. We will try by the end of the day, your Honor.

THE COURT: All right. I was going to suggest if you could have it by 2:00 o'clock that Professor Dershowitz wait around, but Mrs. Rosner, who is also co-counsel, I gather, can pick it up tomorrow if I decide to make it available, or late this afternoon.

All right, does that dispose of the matter?

MR. DERSHOWITZ: Yes, your Honor.

THE COURT: Thank you.

MR. OPPENHEIMER: your Honor, as a formality, may we make a return and file the subpoenas which I served on Mr. Curran, and Mr. Puccio in the Eastern District of New York, as well as the United States Marshals in the various districts?

MR. SAGOR: Your Honor, the motion requested the same relief granted in the subpoenas. I assume they are quashed in connection with -- there is no hearing scheduled for today requiring Leuci's appearance, and just papering in this case, it seems to me, is unnecessary.

THE COURT: Well, let me see the papers, that is a simple way of deciding it.

I want to file these subpoenas, but I want to say without hearing any argument or discussion that I implore this business of serving subpoenas on public officials. I think it is a practice to be condemned, unless it is absolutely, totally and finally necessary, and I disapprove of having United States Attorneys in the Southern and Eastern Districts of New York the object of service of this kind of process. It isn't necessary in this court. It is perfectly apparent that you can get what you have got coming in the form of motions and by applications. It is not necessary to be slapping subpoenas on public officials.

Good morning, gentlemen.

JG

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

vs. :

EDMUND A. ROSNER, et al, : 72 Cr. 782

Defendants :

- - - - - - - - - - - - - - - - - - - x

Before:

Hon. Arnold Bauman,

District Judge

New York, N. Y.

May 29, 1974 - 10 A. M.

APPEARANCES:

Paul J. Curran, Esq.,
United States Attorney
For the Government
and
Elliot G. Sagor, Esq.,
Assistant United States Attorney

Alan Dershowitz, Esq.,
Attorney for Defendant Rosner.

THE COURT: Let the record indicate, Professor, that last evening the Government presented me with a letter containing the information that I requested, and I returned it to them because it contains information of such potential danger that I didn't feel anything in my chambers was secure enough. So I asked them to retain it and return it here again this morning, and I take it Mr. Curran is holding it now.

MR. CURRAN: Yes, your Honor.

THE COURT: Now, may I have it, please?

MR. CURRAN: Yes, sir (handing).

THE COURT: I understand, Professor Dershowitz, that you are really in the unenviable position of not knowing what's in the letter, which makes your argument impossible. And so, with a couple of minor exceptions which wouldn't really add very much to your proposal to the Supreme Court of the United States, which I could read into the record, which I think might be useful to you in accordance what you propose are of the sort that in my mind could lead to great risk for certain individuals.

My basic feeling, and I invite both of you to address yourselves to it, is, now that this is recorded, it is my proposal that it be sealed and be available to the Supreme Court of the United States should they wish to see it.

But I cannot, in conscience, permit the information contained in it to be disclosed because in my view, and in the light of what I'm sure you know to be my terribly extensive experience in the administration of criminal law as a prosecutor and otherwise, it would be a death warrant.

Although no names are contained in it, it is impossible for the Government to set forth the information contained therein without having the persons about whom things are being said know who they are, and I want you to understand that in the first instance and I want the Supreme Court of the United States to understand that in the second instance. But it does exist and it is available for their consideration should they want to see it.

Now, is there anything you wish to say, Professor?

MR. DERSHOWITZ: Yes. Thank you. I certainly appreciate the gravity of this matter and certainly accept your Honor's statements about the seriousness of what is contained therein. The suggestion I am going to make I make with some trepidation because I know it, indeed, may even place me in some degree of danger, if I understand your Honor correctly.

But the proposal I would suggest for the Court's consideration is to allow me to see the letter, with a promise, or representation, from me that I would not show it

to anyone other than associate counsel, and by which I would, by the way, exclude Mrs. Rosner because of the peculiar relationship of her to her husband.

THE COURT: First let me put upon the record that I accept your bona fides, as I always have. That's not the question. Certainly your word is good, and that's no problem. However, I'm not at all sure, Professor, that it is within the bounds of propriety, if I may say so, for you to deny your client access to this should he insist on it.

MR. DERSHOWITZ: Well, at this point I would advise my client, and hopefully he would agree with the advice, that it is better for me to get it than for neither of us to get it, and I think he would simply have to be put in the position of accepting my judgment on that.

What I propose, then, is to file a brief with the Supreme Court, sealed. That is, the procedure you suggested would be followed in every respect except that there would be accompanied with this letter an adversary statement of mine explaining and arguing to the Court why I think certain matters in this have to be seen in one light rather than in another light, something which the Solicitor General can do but which I am not now in a position to do.

Very frankly, I haven't thought this through, this comes as somewhat of a surprise to me, and I understand

this is a rather hybrid solution. I am not sure the Supreme Court would find it acceptable.

THE COURT: Let me hear what Mr. Curran has to say.

MR. CURRAN: Your Honor, it is the Government's position that at this juncture the defense attorneys for Mr. Rosner have no need to get information beyond what they already know, which has been stated publicly by me and which has been referred to in oral argument before your Honor yesterday, to wit that Robert Leuci has admitted certain acts of misconduct over and above acts which he testified to at the trial.

THE COURT: Excuse me for interrupting, but I think the record should be very clear that nothing in this letter tends to indicate that he lied about the facts that were in issue at the trial, the charge; nothing in the letter tends to indicate that he perjured himself in connection with the charge upon which the defendants were tried. These all relate to collateral matters, Professor.

All right.

MR. CURRAN: Yes. And in that connection, your Honor, the Government specifically states, as we have stated before, that the activities involved were not known to the Government and did not start to become known to the

Government until beginning April 17, 1974, that is, last month.

Your Honor has, as I understand it, scheduled a hearing on this matter before yourself on July 1, which is just about one month from today, and the Government will be prepared at that time to proceed with that hearing.

THE COURT: Now that you mention that, I think I should make clear that there will be no delays in that date, and I am going to tell you exactly why. I don't think it is any longer a secret in this building that circumstances compel me to leave the bench, and I am going to leave on August 15th. And no other judge in this building is as familiar with this case as I, and therefore I should determine this motion.

All right.

MR. CURRAN: Your Honor, I certainly regret your Honor's decision to leave the bench.

THE COURT: I appreciate that, and I want to assure you, no more than I.

MR. CURRAN: We will, as I said, be prepared to go ahead on July 1 with the hearing as your Honor has scheduled it and directed it. Basically, your Honor, it is the Government's position that right now, with the matter that is before the Supreme Court and with the additional material

which your Honor has directed be furnished to the Solicitor, everything that needs to be before the Court and can possibly be before the Court will be there, and because of the material that is set forth in the letter and because of its extremely sensitive nature it serves no useful purpose to justice or to the defendant Rosner at this time to make the contents of the letter available, and any remedies to which he may be entitled will be brought before the Court or any material certainly will be fully aired at the hearing which will be held before your Honor on July 1.

THE COURT: What is the proposal, Mr. Curran, as to the way this ought to be handled? I understood you to have suggested just now that this letter be sent to the Solicitor General, that the Supreme Court be advised of its existence and, should they want to see it, he would make it available to them? Is that what you propose?

MR. CURRAN: Yes, your Honor.

THE COURT: On the other hand, I suggested that it be sealed in the records of this court, and should the Supreme Court want it it will be here and sent to them.

I think your suggestion might be more expeditious.

MR. CURRAN: We would certainly tell the Solicitor, your Honor, of the letter and send him a copy, tell him of the Court's direction that it be sealed, if

that is the Court's final direction.

THE COURT: It is indeed. I order now that it be sealed.

MR. CURRAN: We are confident, your Honor, that the Solicitor will live up to his responsibilities and bring that letter to the attention of the Court.

THE COURT: I have no doubt of that.

Professor Dershowitz, it is a complex situation and I'm sure you understand the sensitivity of it, and that is my ruling. I drect that the letter be sealed and that it be available to the Supreme Court of the United States and the Solicitor General, should they require it.

MR. DERSHOWITZ: I take it then that in all other respects the motion is being denied and we are not being told in any more detail than what Your Honor mentioned from the bench the nature of the revelations?

THE COURT: Yes.

MR. DERSHOWITZ: And I take it also, just to be clear, because, with all due respect, I think we will probably seek a remedy from the judgment of this Court today, your Honor --

THE COURT: On the 17th floor.

MR. DERSHOWITZ: -- on the 17th floor. But I would like to make clear that we have final judgment.

THE COURT: Yes. Your motion is denied, as you have indicated.

MR. DERSHOWITZ: I would just like to make one other request. It says again in the Solicitor General's brief, in the footnote: "This case would be analogous to Mesarosh if it were found that Leuci had repeatedly made false accusations of bribery and obstructions of justice."

I would like to make a specific request of the Government through this Court as to whether or not they have any information in their possession indicating that any of the illegal actions which Leuci committed, or which they have reason to believe he may have committed, in any way relate to false accusations, whether in the nature of shakedowns, in the nature of falsely threatening anybody, in the nature of falsely accusing anybody, because unless the Government is able to deny that unequivocally on the record it seems to me that the Government by its own admission has placed this case directly under the rationale of Mesarosh.

MR. CURRAN: Your Honor, in response, at this time the Government has no information or evidence that Robert Leuci has in the past falsely accused persons of crimes.

THE COURT: All right. I shall not compel a further answer. The motion is denied.

MR. DERSHOWITz; Sorry. For the record, may I make one further motion?

In light of the fact that the Government has now indicated that it cannot comply with the Court's order as of yesterday and that the Court has reconsidered its order, we would again move for this Court now to enter an order reversing the conviction and granting a new trial on the grounds set forth in numerous Supreme Court and Circuit Court and District Court opinions indicating that where the Government for exigent reasons cannot comply with an obligation to produce, then the remedy is for a new trial or dismissal of the indictment.

THE COURT: Denied.

MR. DERSHOWITZ: Thank you.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

vs. :

72 Cr 782

EDMUND ROSNER, :

Defendant. :

----------X

B e f o r e:

HON. ARNOLD BAUMAN,

District Judge

New York, N. Y.
June 21, 1974 - 11:00 a.m.

Appearances:

PAUL J. CURRAN, Esq.
United States Attorney for the
Southern District of New York
BY: ELLIOTT G. SAGOR, Esq.
JOSEPH JAFFE, Esq.
Assistant United States Attorneys

ALAN DERSHOWITZ, Esq.
JEANNE BAKER
Attorneys for the Defendant

(In the robing room)

THE COURT: The Government has requested to see me in the robing room.

MR. SAGOR: Your Honor, the Government's request, and I think you will see more of the nature and reason for it, for today is that these proceedings take place in the robing room. We do have a proposed protective order with respect to the material that is going to be made available to defense counsel here. It is for that reason we might as well start out under conditions of confidentiality. How long the conditions will remain and under what circumstances here obviously will be a matter for the Court. But I thought that unless there is strenuous objection we take up today's proceedings in chambers and take it from there.

THE COURT: Let me hear as a first matter what Professor Dershowitz has to say about the matter of these proceedings taking place in the robing room.

MR. DERSHOWITZ: We have no views on that. There is nobody else in the courtroom.

THE COURT: All right.

MR. SAGOR: Assuming others will come in, as opposed to locking the door of a public courtroom, I thought we should do it in chambers.

THE COURT: All right.

MR. SAGOR: Your Honor, I think, before we get into the argument of the motion, it would be helpful as a matter of housekeeping to hand up to the Court, pursuant to the Government's affidavit, a memorandum prepared by Mr. Jaffe, which is a detailed summary of the admissions of Detective Leuci. It is marked on the cover, for the record, "Summary, Joseph Jaffe, Court." We will hand that up now. The clerk may want to mark that.

THE COURT: Mark that as Exhibit 1 of this date.

(Exhibit 1 marked.)

THE COURT: This case was among the first ones when I came here, and it is obviously going to be among the last when I leave. I say that by way of prefacing what I am going to say now.

Mr. Sagor, I am at a loss to understand the Government's attitude that there should be no hearing here, as is set forth in the Government papers, which of course I have read before coming here. Surely by now my views about hearings have got to be known even to the Government. We live in a circuit where hearings in this kind of situation have been mandated over and over again, and where the Government comes in with commendable frankness and says, "Our man lied." How can you then say to me that I should not hold a hearing?

MR. SAGOR: If you are asking me in candor whether I thought that your Honor would be necessarily persuaded by that argument, the answer is no. But,your Honor, we do feel that we do not want to send --

THE COURT: You do not think I enjoy holding hearings, do you?

MR. SAGOR: No. I do not think you enjoy holding the hearings. When we write a brief we believe in the principles asserted. Whether we think the Court is necessarily going to adopt those principles is another matter. At any rate, even if a hearing is required --

THE COURT: I would think you would have spent more of your time in those papers telling me what I ought to give them and what I should not give them, although this appears in the affidavit.

MR. SAGOR: I think, your Honor, that the principles involved, such as being cumulative and as to materiality, do warrant a limited discovery, if any, and if your Honor is troubled by that, we can give your Honor a case on that.

THE COURT: No, I just thought -- I will be very frank with you -- when I saw the same old argument, which I have rejected at least on two other occasions, that your perseverance was commendable.

MR. DERSHOWITZ: May it please the Court --

MR. SAGOR: This is a Government brief with many voices being reflected, as it were.

MR. DERSHOWITZ: One voice that was not reflected in this brief apparently is the voice of the United States Government, the Solicitor General's position. They unequivocally took the position that a hearing must be had in this case.

THE COURT: Well, a hearing will be had. We have been all over this many times in this case, at least three now. The hearing will be held.

MR. SAGOR: I think so, and each time the Government argued against the hearing each time.

THE COURT: Yes, and your batting average is consistent.

MR. SAGOR: I hope that is the exception that proves the rule.

We have a proposed order moved for by our brother, Mr. Jaffe, who is the chief of the corruption unit, in connection with the submission of the summary. We ask, of course, that that be sealed and kept in camera. I do not know if I said that on the record.

THE COURT: You mean this Exhibit 1 of this day?

MR. SAGOR: Yes, your Honor. In connection with that, a summarization categorizing the recent admissions by

Detective Leuci has been prepared by Mr. Jaffe, which we hand up to the Court. We also intend to make a copy of that available to the defense counsel. In connection with making that available, we ask that your Honor sign a proposed protective order not making the information in that memorandum available in any way to the mass media; of course the same thing holds true for the Government.

THE COURT: Has Professor Dershowitz seen it yet?

MR. DERSHOWITZ: I have not seen it, no.

MR. SAGOR: I will give him a copy of the proposed order. We at this time, your Honor, hand Mr. Dershowitz a copy.

MR. DERSHOWITZ: I would make only one comment about this. We have right from the beginning been anxious not to have any publicity attached to this case, and that was why, initially when I had my new-trial motion, I told Mr. Sagor that I preferred to file it in camera with him. And he then characterized it in his response as somewhat less than proper. But initially our actions were prompted entirely by a desire not to in any way bring this matter --

THE COURT: Professor Dershowitz, I have expressed myself about your professional standards in this case before with admiration, and I see no reason for you to feel defensive about it now.

MR. DERSHOWITZ: Thank you.

THE COURT: I do not mean to stop anybody from talking who wants to talk, but why don't I put on the table a reaction I have had to the motion papers from both sides.

MR. SAGOR: Surely.

THE COURT: Professor Dershowitz, the key thing is, as I read the motion papers, he is willing to make Leuci available to you, and Leuci is willing to be interviewed by you. What more are you entitled to?

MR. DERSHOWITZ: Let me speak to that issue. As soon as I heard this yesterday, I immediately called Mr. Stillman, Leuci's attorney, who is out of town, and have an appointment to call him again today. The impression that I have from Mr. Sagor -- and, of course, I can't confirm it -- is that although Mr. Leuci is willing to talk to us, probably in the last analysis we will not get to talk to Mr. Leuci.

THE COURT: Let us find out about that right now.

MR. DERSHOWITZ: I would like to find out about that.

The other thing that I think is very important to point out is this: Two or three weeks ago we asked for an opportunity to speak to Mr. Leuci. There was a representation made in court that Leuci did not want to speak to us and that the Government did not in any way influence his position. It is very interesting to note that nothing has

happened in relation --

THE COURT: Wait. I think a fair amount has happened. First of all, the Government has spent all the time with Leuci that it wanted to, and he was able to go forward with them without interruption and by counsel, who was in the nature of an adversary.

MR. DERSHOWITZ: Right.

THE COURT: Item No. 2: I gather -- I gather -- that since the appeal from my order in Nadjari v. Curran was withdrawn they have composed their differences, and that presumably -- and this is sheer guess; I have no information about this -- even Mr. Nadjari's people have had a chance to talk to Mr. Leuci again. I repeat I have no information about that at all.

MR. DERSHOWITZ: That seems to be the case.

THE COURT: I would put a different face on things as far as Leuci is concerned, that is, his readiness to talk to an adversary.

MR. DERSHOWITZ: From the point of view of the Government that is clear. But from the point of view of Leuci I think that remains to be seen after our interview with Leuci. But we would very much like to speak to him.

THE COURT: Let us get first things first. The first thing is, do you have any reason to believe that

Stillman is going to impede Leuci's availability to Professor Dershowitz?

MR. SAGOR: Your Honor, I simply do not know one way or the other.

THE COURT: We have all at one time or another been engaged in the practice of law, and at least one of us is about to return to that area. In my experience I would think the wishes of the client would weigh very heavily in Mr. Stillman's view, because I gather, based on what Leuci must have told you about his lying at the trial, that he has already exposed himself to anything he can expose himself to.

In any event, since Leuci has been represented to me as willing to talk to Professor Dershowitz, it would make everybody's life a great deal easier if that event were to happen. And I wish my views in that respect would be communicated to Mr. Stillman. Of course, he is the lawyer and will make the final decision. But those are my views.

MR. DERSHOWITZ: It would expedite matters to take a five-minute recess at this point and for me to call Mr. Stillman, with Mr. Sagor.

THE COURT: Why not? Because, very frankly, Professor, you have asked for every conceivable -- I am picking my words carefully -- thing. One must bring a certain amount of common sense to the disposition of these

matters. I think both of you know my attempts at fairness over the last two and a half years. It would seem to me that if Leuci is going to be available foryou to talk to within the week before the hearing takes place, that is just about enough. He is going to tell you, "I lied about this, I lied about that, I lied about the other thing."

Now let us talk also about something else in your motion papers and that is referred to in the Government's. There was a time when I went through certain Police Department records, and I did not make them available to you because there were charges that were unsubstantiated and they never came to anything. It was my view then -- it is my view now -- that the mere making of unsubstantiated charges was not the kind of thing that anybody would contemplate as available to counsel for inspection.

Also, as I remember that, and it is two years now -- I may be wrong about this; don't take this as a representation -- the very complainant in that matter wiggled and waggled and created something less than the illusion of utter and complete frankness. That was in my mind when I declined to make that available to Mr. Krieger, I guess it was, at the trial.

So I think it would be useful if somebody called Mr. Stillman and found out what he intends to do. Because I tell

you now that will very largely determine what I do on the motion.

If you are going to get to talk to Leuci, Professor, I am sure you understand that I would feel that I had been more than fair with you -- perhaps not more than fair but fair with you.

MR. DERSHOWITZ: I think there is one other very important matter.

THE COURT: Yes?

MR. DERSHOWITZ: That is, the whole polygraph lie detector issue. You will recall that at the very time that your Honor was holding a hearing on a new-trial motion a year ago, and your Honor was implying from the bench at the very least that if it were proved that Leuci had perjured himself, certainly you would seriously consider granting a new trial at that point, at that very point in time the Government had in its possession serious allegations by Mr. Lawrence. They subjected him to a lie detector test, and on the basis of --

THE COURT: Lawrence to a lie detector?

MR. DERSHOWITZ: Lawrence to a lie detector test. On the basis of the lie detector test the polygraph operators concluded that he was lying and therefore that they had no obligation to bring to the attention of the Court, in front

of which there was a new trial motion or defense counsel, the substantial allegations made by Mr. Lawrence.

We think we are entitled, because we have extensive expert material prepared, to see the underlying charts of that lie detector test. Because we can show you brief after brief with the Government --

THE COURT: I will discuss that with you as the day wears on. But I want to put on the table something that interested me that nobody has raised. I am going to make certain things available. But I am unaware in all my experience in criminal cases, both state and federal, of discovery in connection with a motion for a new trial. I just do not know where your right proceeds from. And, as you know, I have been at this business longer than I care to admit. I am unaware of the foundation for an application for a pre-motion discovery.

In any event, just have that in mind when I make my rulings.

MR. DERSHOWITZ: Fine. We would be happy to submit authority. There is authority on this.

THE COURT: I do not think it is necessary. I am going to give you any Brady material that the Government has. Brady material has been defined -- and I adopt Judge Pollack's view in that case of his --

MR. SAGOR: Brower.

THE COURT: -- Brower, in which he made the most scholarly development of the law pertaining to Brady that I have seen. If he is wrong, then I am wrong right along with him.

MR. SAGOR: The Circuit, by the way, has affirmed that decision. I was on the brief.

THE COURT: All right. Then I adopt the exposition of the Brower case and the test that Judge Pollack enunciated in Brower.

Why don't you telephone Stillman?

MR. JAFFE: Your Honor, before we do that, can we complete the matter of the protective order, and then we will go ahead?

THE COURT: Let me see what is in it. Let Professor Dershowitz see what is in it.

Do you have any problem with that?

MR. DERSHOWITZ: No, I don't see any objection. I take it the protective order does not include conferences between myself and my client or investigators?

THE COURT: No. It makes reference to the defendant or his counsel in there. I said from the bench the other day that I was unaware of any way in which you could be prevented from talking to your client about these things.

MR. DERSHOWITZ: There is one matter that I probably should get at least some judgment on. That is, having read Mr. Barber's investigative reports and also the investigative reports of the New York Post reporter, it is my intention to seek to interview those reporters and to seek to elicit from them any information they have which our investigators have not been able to acquire.

THE COURT: I do not see that that has any relation to this order. You are at liberty to do whatever independent investigation you want to.

MR. DERSHOWITZ: But including speaking to newspaper persons.

THE COURT: Why, of course.

MR. DERSHOWITZ: We have no objection in light of that.

MR. JAFFE: Except that your interviews with the newspaper people will be limited to your seeking access and not giving information.

MR. DERSHOWITZ: Right. And I take it this does not cover, as it usually does not cover, matters of public record, that is, matters like, for example, briefs and pleadings that have been submitted in open court.

THE COURT: Of course not.

Now will somebody call Stillman?

MR. SAGOR: Yes.

MR. JAFFE: Your Honor, for the record may we mark the summary that was furnished as Court Exhibit 1A.

THE COURT: Yes.

(Court's Exhibit 1A marked.)

(A telephone call was made to Mr. Stillman, and Mr. Dershowitz and Mr. Sagor spoke to Mr. Stillman.)

THE COURT: What did he say to you on the telephone?

MR. DERSHOWITZ: He agrees for us to interview Mr. Leuci on Tuesday of next week. His preference -- he stated first his preference; and perhaps a little bit stronger later on -- was that the Government probably should be present at any such interview. I stated my preference that we should have an opportunity to interview him first outside the presence of the Government, he not belonging to the Government. And I think that is not yet totally resolved, probably pending somewhat what the Government's position is on that. But I think at the moment we probably can assure it would be in the presence.

MR. SAGOR: That would be the Government's request here.

MR. DERSHOWITZ: And finally Mr. Stillman asked me to inform the judge that this would not be a pro forma proceeding; that if it were to be a pro forma proceeding he would have said no. As far as he is concerned, he will give

us a fair crack, is the way he put it exactly.

THE COURT: The sense of what you got is that Leuci will answer your questions?

MR. DERSHOWITZ: That is right. But he did say that there were certain questions -- and this is the reason he wanted the Government present -- certain lines of inquiry which are presently under investigation which the Government may not want him to answer, and he certainly does not want, quote, problems, where he would get into any trouble with the Government, was the sense.

Perhaps the next issue to pursue is to get some assurances from the Government that they will not unduly limit the scope of the questions.

THE COURT: The first thing we can do is get rid of Mr. Stillman, who is still holding onto the phone.

(Mr. Sagor spoke on the telephone to Mr. Stillman, during the course of which the following took place:)

THE COURT: While Mr. Stillman is on the phone: In consideration of this matter and having in mind that I would make him available to you, Mr. Leuci it seems to me is possessed of two kinds of information or may be possessed of two kinds of information: (1) wrongdoing in which he participated; (2) wrongdoing of which he had knowledge but in which he did not participate. I shall not require him to

answer questions with relation to anything but wrongdoing in which he participated. Is that clear?

MR. SAGOR: Yes, your Honor.

THE COURT: All right.

(Mr. Sagor concluded the telephone conversation with Mr. Stillman.)

THE COURT: It may be that what I just said may close off some of the areas of what you may be concerned with, I don't know. But, in any event, I had that in mind and I just wanted to put that on the record: things which he knew but in which he did not participate he need not answer.

MR. SAGOR: Obviously -- and I think Mr. Jaffe may want to speak to that -- there are other matters the details of which he did participate in which would be investigated as to names, details, that kind of thing, as opposed to generically what he did, which the Government would have objection to getting into. We feel it is unnecessary in connection with the particular motion.

THE COURT: Over the course of this and other matters I found Professor Dershowitz reasonable about these things. If you have a problem, I will be in all of next week, come back and I will rule.

MR. SAGOR: Fine.

MR. JAFFE: Very well.

MR. SAGOR: Your Honor, more with housekeeping, so we can turn over to the Court all our submissions: The next item which can be marked Court's Exhibit 2 and Court's Exhibit 2A is something that I will refer to as the Goe memorandum, dated July 14, 1972. I ask that a copy marked Court's copy be marked Exhibit 2, which for the record consists of five pages complete. I ask that be marked Court's Exhibit 2.

(Court's Exhibit 2 marked.)

MR. SAGOR: And I ask that a two-page extract entitled on top "Duplicate Copy Turned Over to Defense Counsel" be marked Court's Exhibit 2A.

(Court's Exhibit 2A marked.)

MR. SAGOR: Mr. Dershowitz, I will show you what has now been marked by the Court as Court's 2A.

MR. DERSHOWITZ: We are being shown 2A, but we are not being shown --

MR. SAGOR: Yes. I have handed you a copy of 2A. If you just look at that for a moment.

MR. DERSHOWITZ: I understand, but we are not being shown the document to which it is attached.

MR. SAGOR: That is correct. Just acknowledge for the record that what you have in your hand, which I have

turned over to you this morning, is 2A.

MR. DERSHOWITZ: Yes.

MR. SAGOR: Fine. The other thing, your Honor, being turned over is documents 1 through 22 in a folder marked Court-Taylor, and I ask this be marked Court's Exhibit 3. These documents have reference to the Government's first affidavit of April 9, 1974, in one of the footnotes thereof.

(Court's Exhibit 3 marked.)

MR. SAGOR: Your Honor, I have acknowledged to Mr. Dershowitz in conversation this morning that with respect to the Goe memorandum which contained an admission prior to trial on Leuci's part, apparently, of receiving $50 which he failed to turn in, the Government would consider, if it had it at the time, that that would appropriately have been 3500 material, which if the prosecutors had known about the case they would have turned over. We think this is a different document than the others that were handed to the Court for the Court's submission. The part of the Government Exhibit 2, the Goe memorandum, which we have not turned over to defense counsel relate to other matters still under investigation, not admissions on Detective Leuci's part; information he has given to the Government. With respect to the names involving the $50 instance, those were blackened, and I think

the reason being that they relate to people who still may hold official positions in law enforcement.

MR. DERSHOWITZ: With respect to that document, I am quite surprised to hear the Government say that if they had this information. The document on its very face indicates that in July of 1972, one week before Mr. Rosner's discovery motions were made, this information was disclosed in an interview, quote, in the office of the United States Attorney for the Southern District of New York. At that interview conducted a week before Mr. Rosner's discovery motions in this very courthouse, in this very United States Attorney's Office, Mr. Leuci admitted to a serious felony. He then denied having committed that felony, both in the pretrial interviews and at the trial itself. For the Government to characterize that somehow as evidence it did not have in its possession --

THE COURT: No, I think, Professor, what you have here is a situation that has been called by the Court of Appeals negligent suppression, in cases like Consolidated Laundries. I think that was the first of them. I think really where you have what might be called negligent suppression, the question is: How important was that one issue to the defense at the trial, having in mind the other material which Leuci did admit at the trial?

But I think, just to clear the air a little bit, that kind of conduct -- indeed, as I remember what happened in the Consolidated Laundries, a case which I tried myself, succeeded in losing, but did not handle in the Court of Appeals, Judge Owen, who was then in the Antitrust Division, was unaware of certain papers that bore very heavily on credibility of the principal Government's witness and found them long after the trial. It was against that background that the Court of Appeals in that case reversed, because it was of such striking importance.

So that is really what we are talking about.

MR. DERSHOWITZ: But in this case also I think the record should note that Mr. Sagor told me in conversation this morning that he became aware of this admission of a felony at about the time that we filed our original new-trial motion several months ago.

MR. SAGOR: No, that is not correct. That is not correct. I told you this morning that at the time the Government's affidavit was in, that piece of paper had come to my attention that very afternoon. There were valid reasons at the time that I did not more specifically refer to this document in my affidavit, and I stand by that decision. The record should reflect that the Government, in my view, in the usual traditions of the United States Attorney's

Office, sua sponte brought that document to your attention at the first available time in the context of the hearing and told you that this related to a matter that if we had at the time we would have turned over; that if the prosecutors in the case -- and let us name names: Mr. Morvillo and myself -- had it, it would have been turned over as 3500 material. Indeed we turned over a mass of 3500 material. The Government in some small way may be culpable of negligent or de minimis error, which is the Government's position here.

THE COURT: Let me ask you, Professor, having in mind that you got what you got so far, what of the voluminous requests in your motion papers do you now press?

MR. DERSHOWITZ: I think frankly the ones that we would press most vigorously would be the ones relating to our allegation in relation to Mr. Lawrence, the Baron.

THE COURT: What page are they on?

MR. DERSHOWITZ: In the motion they are primarily item G at the moment. Let me at least now limit my remarks to G.

THE COURT: Let me read it first.

MR. DERSHOWITZ: Reading from our motion, notice of

motion, for discovery, page 2, last paragraph.

May I explain what the relevance of this is?

THE COURT: Yes, but against the background of what I will say, Professor, and that is that polygraph tests are not receivable as evidence in this Circuit or, indeed, in the state courts of the State of New York.

MR. DERSHOWITZ: That is precisely our point.

THE COURT: They do not prove anything.

MR. DERSHOWITZ: That is precisely our point. The point is that the United States Government has repeatedly filed briefs in this court and in courts throughout the country indicating that lie detector tests are not reliable, that nothing should turn on the lie detector tests, and yet it is their position that the lie detector tests which Mr. Lawrence allegedly failed obviated any responsibility on their part to turn over or to further investigate the serious allegations made by Mr. Lawrence.

So it seems to me that it is not enough for them to turn over to us merely the conclusory statement that Lawrence failed. Because they themselves have repeatedly taken the position that a conclusory statement that somebody passed or failed a lie detector test is utterly relevant. One must know what information was given to the lie detector operators previously thereto, what the charts showed, how many tests

were administered. We are prepared to call experts to show that on the basis of the charts in this case the Government should not have and could not responsibly have refused to turn over those of Lawrence.

THE COURT: What I have said about the rules of evidence in this Circuit and in the State of New York is quite accurate. I would be remiss, however, if I did not say that it is universally used as an investigative tool by prosecutive agencies and is accorded such weight as they want to give it. But it is universally used by state and federal prosecutors, I think it fair to say, and is one of the things that go into the mix that constitutes their prosecutive judgment.

MR. DERSHOWITZ: We have no doubt about that, and that is entirely proper. It seems to me, though, that in light of the negative views that the prosecutor has stated about a polygraph test, for them to now come and say that they were justified in not making available to us a witness at a time when a new-trial motion was pending, a witness who had made substantial allegations involving criminality by Mr. Leuci, solely on the basis of his failure of a lie detector test, entitles us to probe more deeply into what went into that lie detector test.

THE COURT: When did they refuse to make this fellow

available?

MR. DERSHOWITZ: The timing is extremely crucial. Very shortly after the conviction, that is, the jury verdict in this case, Mr. Lawrence came forward and gave very substantial information about Leuci's extensive involvement in corruption -- indeed, allegations which have been borne out by the test of time, substantially similar to what Mr. Leuci has now admitted to.

The Government had this information on the very day that Mr. Krieger stood up before this Court and asked for a hearing and a new trial on which Cardi and those other narcotics users were called to testify.

Your Honor made a credibility determination, one with which I would not disagree.

THE COURT: It is impossible to have come to any other conclusion.

MR. DERSHOWITZ: That those three witnesses were just simply not subject to being believed. On the other hand, your Honor implied throughout the proceedings, and Mr. Sagor at one point stated in the proceedings, that if this Court were to conclude that in fact Mr. Leuci had been involved in substantial narcotics activities, that is, if Mr. Cardi's testimony were to be believed, that would certainly raise the possibility of a new-trial motion.

MR. SAGOR: When did I say that?

MR. DERSHOWITZ: We will point to the place on the record.

THE COURT: I would not doubt that I said that. Now let me go on one step. This happened after the jury had found a verdict of guilty.

MR. DERSHOWITZ: Right, but before judgment of conviction had been entered.

THE COURT: Before he was sentenced.

MR. DERSHOWITZ: Yes.

THE COURT: Let me say here and now that I regarded what Rosner had done with such seriousness and such severity that my sentence reflected that. The fact is that this fellow, whatever his name is, came to them after the jury had found Rosner guilty. Insofar as sentence is concerned, I can tell you now that would not have affected my sentence, because I think my views were adequately expressed in connection with the remarks I made on the day of sentencing in this case.

MR. DERSHOWITZ: That is not my point.

THE COURT: Just hear me a little further. So what is going through my mind is how you have been prejudiced. Well, they did not tell you about this man. You found out about him yourself. He is now going to be the basis of a

hearing. You have him available to you to predicate your motion on. How are you prejudiced by this failure, even assuming that it had been a deliberate lapse, which I don't? Go ahead.

MR. DERSHOWITZ: There are a number of ways in which we are prejudiced. One, your Honor was hearing a new-trial motion within several days after the conviction had been rendered. It is clear and it is well established by the cases that a new-trial motion is more likely to be granted immediately upon conviction than many months or a year thereafter. Your Honor had heard three witnesses testify as to corruption by Leuci and disbelieved all three of those witnesses.

THE COURT: I just want to put in the record at this point, because it is absolutely true, that I said at the time, as I remember it, that I regarded these poor derelicts as such; and I have got to tell you, Professor, just to let you know the inside of a judge's mind, I did not credit their testimony at all.

MR. DERSHOWITZ: I think that is a fair conclusion.

THE COURT: It was not that I was even tempted to credit their testimony. It was dreadful.

MR. DERSHOWITZ: That is the point. If your Honor would put himself back into that situation, after having

heard three witnesses --

THE COURT: I remember it clearly.

MR. DERSHOWITZ: -- whom you did not credit, what would happen then if suddenly a fourth witness were to appear, if the Government would come in and say, "By the way, your Honor, we do have to make full disclosure at this point that we have a fourth witness, a fourth witness who is not a narcotics addict, a fourth witness who Robert Leuci has testified repeatedly is a man with whom he would trust his life, a fourth witness who has repeatedly been the basis of federal search warrants, and he too corroborates everything that was testified by the derelicts."

THE COURT: I will answer your question. I would have ignored totally the testimony of the three derelicts, totally, no matter what this man said, because they were incredible, I think it fair to say, as a matter of law.

What would I have done with this fellow? I would have taken him as I found him, just as I shall on a hearing in this case, and I do not see that you have been prejudiced in any way. I shall listen to him; I shall evaluate him. The fact that it is now rather than then has had no effect and will have no effect in my determination of the motion.

MR. DERSHOWITZ: Let me put it slightly differently, then. It seems to me that the Government, unless the

Government is to somehow be penalized for its failure to make a disclosure -- after all, if we had not found Richard Lawrence, ten years could have passed; Mr. Rosner could have served his term completely, and the Government would still have had in its possession substantial evidence, which it will now hear as a result of our investigation. It seems to me that the whole logic of the deterrence and the exclusionary rule requires that the Government not profit and, indeed, in some way be penalized for its deliberate -- and here there is no negligence involved -- refusal to turn over to us --

THE COURT: If what you say is true -- I make no judgment about that -- then it would seem to me that certain individuals may be subject to a disciplinary proceeding. But I do not see that it greatly affects the condition of your new-trial motion. Because I am going to listen to this man with just as open a mind as I would have the last time I had those poor people before me. And I would have disregarded what they have said, as I did, and I would have taken him alone, as I shall now. So I do not see that you have been prejudiced in that way.

MR. DERSHOWITZ: There are cases, and Polizzi is only the most striking of them, if you recall, where the Government is under a continuing obligation to disclose evidence of this

kind at any stage in the proceedings, the [illegible] before the trial, at the trial, after the trial, certainly while matters are proceeding at the time when a new-trial motion is pending. For the Government to fail to disclose that kind of information--obviously we are not interested in disciplinary proceedings--does go to the issue of whether the suppression was negligent, which evokes one standard; deliberate, which evokes another standard. This Circuit has more than any other set up a very careful set of balanced tests in the DeSapio and other cases which require more to be shown -- the less to be shown, the more egregious or the more serious or the more deliberate the Government's suppression.

It seems to me that it is very relevant for this proceeding on the ultimate judgment for us to know precisely the circumstances under which the Government did not make that disclosure.

THE COURT: It may well be, but the fact of the matter is that one thing none of us must lose sight of in this proceeding that is about to go forward on July 1 -- we have a man who has admitted to lying under oath at the first trial -- the one thing that we cannot lose sight of is the fact that he has admitted to lying about collateral matters and not those that went to the guilt of the individual as such,

matters that went to his credibility but not to the guilt of Rosner as such.

MR. DERSHOWITZ: We dispute that. Our position is as follows: that when a person has been convicted of crimes, simply of crimes, has committed crimes, that is, is a bad person, that may go only to the issue of credibility. But when a witness has perjured himself at the very trial, that goes to the issue of motivation. That is, a jury could reasonably believe that if a witness was willing to perjure himself at a trial, he might be motivated to have made a case against this defendant. Basically, that is the way the defense would have argued if he did argue his case.

THE COURT: I do not think the case is reasoned that way, and I decline so to hold.

MR. DERSHOWITZ: The other matter --

THE COURT: Frankly, why don't you give the lie detector test to him? What earthly difference does it make?

MR. SAGOR: Your Honor, it is our position that we do not see any need to get into some sort of battle of the experts.

THE COURT: There isn't going to be any battle of the experts. Do you have a scientific examination the result of which was that this man was not telling the truth?

MR. SAGOR: We did. We put it in our affidavit. But they want the squiggly lines, the graphs --

THE COURT: We are not going to try the value of the polygraph for the 4,000th time since it was invented. We are not going to do it, I tell you now.

MR. SAGOR: There is no reason to turn that over, then.

MR. DERSHOWITZ: What if the chart showed our expert that indeed he was telling the truth?

THE COURT: That would not prove it showed to his expert the same.

MR. SAGOR: He has flunked other tests. Are we going to get into Lawrence's other tests? I just heard the other day he flunked a test up in the Bronx. I will check that out. The Government's position, I might as well state -- you have been talking, now I will talk; excuse me, I do not mean to take umbrage, but just let me state it in thirty seconds -- was that the Government was not negligent here, did not do anything purposely. The Government's position was that it was under no obligation whatsoever at any time after Lawrence had flunked the test and the other investigation was done in getting an opinion of his reputation in the community for truthfulness and veracity from Mr. Nadjari's office, from Mr. Rogers' office, that we should --

THE COURT: Mr. Sagor, I want to ask you something. Quite aside from whether you have to give it to him or do not have to give it to him: Wouldn't common sense be to put such a thing in the record from your own point of view to justify your own decision in not calling the existence of this man to the defense? Wouldn't that be common plain old sense?

MR. SAGOR: It was not my decision, your Honor. I knew nothing about it.

THE COURT: I will make the decision. Turn it over to him.

MR. SAGOR: I am sorry, you meant the squiggle lines, the reports now?

THE COURT: Turn over the report of this individual to Mr. Dershowitz.

MR. SAGOR: All right. I am sorry, your Honor. I thought you were talking about the --

THE COURT: I am not going to require you to turn over anything having to do with Leuci's lie detector test.

MR. SAGOR: He never took one.

THE COURT: He never took one. All right.

MR. DERSHOWITZ: The only other matter relating to this, Mr. Morvillo in his affidavit made a representation that investigations were made above and beyond the lie detector

test. And we think certainly that goes to the very essence of what the Government did.

THE COURT: Investigations of what?

MR. DERSHOWITZ: For example, Mr. Lawrence alleged very substantially that he gave cars, he turned over cars, to Robert Leuci. That is something that we can't investigate. We have no access.

THE COURT: Cars?

MR. DERSHOWITZ: Automobiles. Surely if the Government did an investigation and found out that in fact there had been car transfers as stated made by Mr. Lawrence to Mr. Leuci that would have been the most substantial testimony possible that there was credibility to his story. We think we are entitled to find out what investigation Mr. Morvillo undertook and whether he in fact did check to see whether any car transfers were made.

THE COURT: I differ with you. I think you are entitled to anything of an exculpatory nature, and I do not think you are entitled to the investigation that they made as to Leuci.

MR. DERSHOWITZ: Does that mean that if in fact he did turn over car transfers we would not --

THE COURT: All of this will come out on the hearing. I will rule at the hearing. I do not think it is necessary

to give it in advance of the hearing.

MR. DERSHOWITZ: In fact, let us be very clear about that. Although we characterize these motions as motions for discovery, this is not a trial. We really have no substantial interest in having this turned over well or much in advance. Basically, we are interested in having it turned over at some appropriate time.

THE COURT: Frankly, what I think that you are entitled to, whether this is a trial or a motion or whatever, in the simple interests of fairness, is what you have got. You are going to have a chance to talk to the witness before the hearing. You are going to be in a position to anticipate what he is going to say at the hearing and to cross-examine him at the hearing. I think that is giving you a great deal.

On the other hand, I have also directed the U. S. Attorney to turn over any exculpatory matter within Brady, as I have said previously, and I really do not see what you are entitled to beyond that at this stage of the proceedings.

MR. DERSHOWITZ: At this stage of the proceedings, to be sure. But, for example, this document -- I don't know if your Honor has had a chance to go over this --

THE COURT: No.

MR. DERSHOWITZ: -- this very unilluminating document that has been turned over to us under a protective

order says absolutely nothing which is in any way helpful to us.

THE COURT: If it becomes necessary at the hearing for me to read the entire thing and make available to you other material matters which I think are material I will do so.

MR. DERSHOWITZ: That is all I am really asking for.

THE COURT: I will not do so in advance of the hearing.

MR. DERSHOWITZ: There is no need for that. If Leuci in fact is willing to talk to us fully, this letter becomes redundant. If it turns out that Leuci is not willing to talk to us, we will be back to ask for --

THE COURT: Isn't the sensible thing, then, to do to wait to see what he tells you?

MR. DERSHOWITZ: That is perfectly right.

THE COURT: Is there anything else before us?

MR. DERSHOWITZ: May I just quickly run through the other discovery motions to see if there is anything else that has not been covered.

THE COURT: Yes. Just take your time.

MR. DERSHOWITZ: I must apologize. I did not get the Government's response until this morning at 10 a.m., so I have not had a chance fully to go through it.

THE COURT: Just take your time.

I do want to say again that my views as to Mr. Rosner's crimes and the seriousness of them were expressed in my sentencing remarks, and I just feel the record should indicate that.

MR. SAGOR: Your Honor, while we are on the subject --

THE COURT: Why don't you let Professor Dershowitz read his papers and then we can talk some more.

MR. DERSHOWITZ: Surely in terms of the reports, the documents which were given to your Honor, you know our position has always been that defense counsel, subject to all appropriate protective orders, are entitled to read those documents in order to make their own adversary determinations as to whether they are exculpatory or useful. At the very least we would ask your Honor to look at those documents and --

THE COURT: Which documents are you talking about?

MR. DERSHOWITZ: The Taylor report, the very critical Taylor report, referred to initially in the affidavits.

THE COURT: Let us understand where we are in this case. The conviction has been affirmed. That is gone. Any points that might have been raised in connection with my errors at the trial are finished.

MR. DERSHOWITZ: Right.

THE COURT: What we are now talking about is your new-trial motion and that is all.

MR. DERSHOWITZ: That is right.

THE COURT: All right.

MR. DERSHOWITZ: On the new-trial motion, it seems to me that one of the most critical documents is the Taylor report, because it is a document contemporaneous -- the only document we have now -- with Mr. Rosner's pretrial motions. In other words, this is the information on record. We think there may be more; we will develop that at the hearing. But this is the information the Government, the U. S. Attorney's Office, had available to it at the time when it represented both to this Court in its discovery and sat silently by while Mr. Leuci admitted only four crimes that --

THE COURT: Wait. It seems to me your motion now is taking three aspects. One is the conventional motion for a new trial wherein under certain circumstances the Court must determine whether the evidence would have affected the result, or in other circumstances whether the matter might have affected the result, and I am sure the differences between those matters you are familiar with.

MR. DERSHOWITZ: Yes, sir.

THE COURT: That is one aspect. The other aspect I sense this morning, Professor, is that you are saying they

were bad boys, and because they were bad boys they have got to be disciplined, and the way they have got to be disciplined is by setting aside this conviction.

MR. DERSHOWITZ: I would say that our point of view --

THE COURT: Is that not a fair characterization?

MR. DERSHOWITZ: That is a fair characterization. It is a little more complicated than that, as we will set it out at our hearing.

THE COURT: I am a very simple-minded fellow, as you know.

MR. DERSHOWITZ: We have -- I hate to say this -- nine independent grounds for seeking a new trial. But I think you accurately set down the most important of them. Basically, our position in summary is that if, standing alone, there were no Government misconduct or negligence in this case, the perjury that has now been admitted to, in light of, for example, the jury's focus on whether or not Leuci had committed other crimes, that standing alone probably would have resulted in a different verdict.

We also argue that the Government's misconduct in this case, standing alone, should result in a new-trial verdict.

THE COURT: But overall you say that all nine of them should result in it; right?

MR. DERSHOWITZ: Overall, we are saying --

THE COURT: Or any combination of them.

MR. DERSHOWITZ: Or any combination. It is the combination that we are particularly focusing on. In light of the degree of perjury and in light of the degree of Government negligence, under the totality of circumstances justice requires a new trial.

THE COURT: I understand your point. I must say it is always very exciting to have you performing, because I hear things I have never considered before.

MR. SAGOR: Nor has any court, your Honor.

MR. DERSHOWITZ: I am just running through these.

THE COURT: I am going to miss you, Mr. Dershowitz, after August 15.

MR. DERSHOWITZ: I think I can say it will be likewise.

MR. SAGOR: The Government won't comment, your Honor.

MR. DERSHOWITZ: Again, just to reiterate, the Taylor report which has been called Exhibit 3 is Court Exhibit 3, that is, the record should reflect that we have never seen it. As to the issue of Government suppression, it seems to me that it is very important for us to know what information the Government had when it resisted the discovery motion. And at least, although we take the position we ought to see it unequivocally, we also take the position that if your

Honor reads it and finds there is any information in it that would be useful to us on a new-trial motion, it should be turned over on any kind of a protective order.

THE COURT: I will do that.

MR. DERSHOWITZ: It seems to me, in light of the protective order we have consented to, we should be given, not discoveries -- we don't care when we get it -- but liberalized access to what the Government had available to it, which is, after all, stale evidence. The Taylor report I am sure goes back to 1970 or 1971.

THE COURT: Taylor's name I seem to remember from this case. Refresh my recollection.

MR. JAFFE: He was an inspector, your Honor. He was then Bureau of Narcotics and Dangerous Drugs Inspection Service inspector, Thomas Taylor.

THE COURT: All right.

MR. JAFFE: With regard to the Professor seeking liberalized discovery, for whatever reasons he thinks he ought to have that discovery --

THE COURT: I don't think he is asking for anything now. He knows what he is going to get now. I think he is making his record as to what he wants me to be ready for on the hearing in substance.

MR. DERSHOWITZ: That is right.

MR. JAFFE: Our only point on this particular matter, Judge, is that, as we pointed out to the Court before, we are involved in an extensive investigation as a result of disclosures made to us by Leuci. The Special State Prosecutor's Office is also involved in an extensive investigation. We have not been sitting on our heels. We have been doing whatever humanly possible we can do to expedite that investigation. We can state on the record that one of the reasons that we resist this motion is that some of the people who are connected with the investigation of this Rosner motion have been involved in various other situations that have not come out.

THE COURT: I understand that, Mr. Jaffe. But the other side of that is that this man has been convicted of a most serious crime, one in which I saw fit to sentence him to five years, which was set aside. So that that is an indication that I regard it very seriously. Therefore, because he has been convicted, I must find some kind of balance that will permit him to defend himself on the one hand and to protect the Government's interest if they are not incompatible.

MR. DERSHOWITZ: May I respond to you?

MR. JAFFE: Just a moment. I could not agree with your Honor more, and I have no doubt of Mr. Dershowitz's personal integrity. That is not my problem at all. But I do

not think that the lawyer and his integrity always represent the client and the client's integrity, and that is the reason for it.

MR. DERSHOWITZ: May I on the record state our position on that. I would be prepared to be bound by any reasonable order restricting access to this information to any person you name. For example, if you think an investigator in our employ should not see it, I would be bound by that. If you think that the client should not see it, I would be bound by that. And I discussed it with my client and I am authorized to make that statement. I will go further. If you think the client's wife, who is an attorney, should not see it, I will be bound by that. All I say is that my associate, Miss Baker, who is not an associate of the Rosners, have access to it, so that we can make any kind of adversary determinations that may be necessary.

MR. SAGOR: I object to that too, your Honor. There is an additional reason. The Taylor material, as your Honor will find from the material itself and from Mr. Jaffe's report, Court's Exhibit 1, is similar in time, and indeed it is almost in substance the same as what was in that Police Department file, the same ruling that your Honor made then --

THE COURT: I will read it and make up my mind, then.

But in the meantime I am going to order all these Court's exhibits sealed and put in the place where sealed documents are usually put for safekeeping, yes. Those documents are sealed. I shall read them at the hearing and make available those which I think appropriate.

MR. SAGOR: Your Honor, 2A is not sealed and 1A is not sealed.

THE COURT: I understand. What are we sealing?

MR. SAGOR: 1A is not.

THE COURT: 1 is being sealed.

MR. SAGOR: Yes, your Honor.

THE COURT: 2 is being sealed.

MR. SAGOR: Yes.

THE COURT: And 3 is being sealed.

MR. SAGOR: Yes. But 2A is not sealed.

MR. DERSHOWITZ: Do I understand 1A -- maybe we can get a representation on this -- is essentially the same letter that was sent to this Court, which this Court --

THE COURT: I do not think he need respond to that; that is, I will not require him to respond.

MR. DERSHOWITZ: Fine. What I would like to know -- and I did not mean to be prying for information I am not entitled to -- are we now being given access to that letter, or is that letter continuing to be sealed?

MR. SAGOR: No, the Government's request is that it is hopefully continuing to be sealed.

THE COURT: That is the Court's order.

MR. DERSHOWITZ: Fine. I just want to be clear on that.

THE COURT: You are not being given access to that letter.

MR. DERSHOWITZ: And I take it that under the present policies --

THE COURT: As to what I have just said, not that it is specific as I said previously, but in my view it is more apt to endanger the lives of individuals.

MR. DERSHOWITZ: One other point. We do not know what has been turned over to the Court. But at the very least it seems to me that what ought to be turned over to the Court for its inspection and us too, we think, are the detailed debriefings of Officer Leuci, so that the Court can compare in his chambers the material that has been turned over to us with the material which you have in your possession to determine whether or not sufficient disclosure to us has been made.

MR. SAGOR: I am not very clear on that. I think Mr. Jaffe can speak, if I may, because it is his document which has been turned over to the Court. From what he has done from

extensive hours of debriefing on his own and to insure that nothing has been left out, he has looked at practically all yellow sheets of paper of anyone else. The yellow sheets of paper are not in there, but Mr. Jaffe's memorandum is 100 percent comprehensive. I do not think we should impose upon Judge Bauman to look into someone's foolscap to see if it is in the typewritten report. Mr. Jaffe can speak to that, but I think that is in essence what you are asking: that the judge insure that the most comprehensive report also includes every squiggle on anybody's yellow pad.

THE COURT: Again, I am not at all sure that Section 3500 applies to applications of this kind. But I want you to have ready in case I decide to turn it over a redacted copy of the debriefing, limiting it to the matters about which Leuci will have testified on this hearing. Is that clear?

MR. JAFFE: Yes, your Honor.

THE COURT: All right.

MR. JAFFE: Your Honor, we have handed up to you --

THE COURT: I do not mean to infer from that I am necessarily going to turn it over, but I may.

MR. JAFFE: Your Honor, we have handed up to you a drafted memorandum of the debriefing. That is being typed in final form this weekend.

THE COURT: Where is that?

MR. JAFFE: That is Exhibit 1.

THE COURT: I am going to seal that, because I do not want that to be kicking around.

MR. DERSHOWITZ: Fine. And --

MR. JAFFE: Let me just finish my statement.

That exhibit contains the contents of every debriefing of which I am aware of all the officers and all the investigative agencies that have talked to Leuci, with the exception of the Special State Prosecutor's Office. They are receiving a copy of that. They will review that and they will be prepared to come into court and say whether there is anything else that is missing from that document. If there is, we will submit it to the Court.

THE COURT: All right.

MR. DERSHOWITZ: The only further matters that we have to cover are the Lakeview Manor tape.

THE COURT: The what?

MR. DERSHOWITZ: The Lakeview Manor tape. I will explain that in one minute. Mr. Sagor's representations, though accurate, are incomplete. That is, on the 18th we had a discussion in which I told him all the information I then had available, which was: we have information that there were wiretaps and bugs installed in a place called the

Lakeview Manor, a catering place in Great Neck, New York, owned by one Listerino, who is allegedly a front man for one Colombo, and that Mr. Leuci's voice was picked up on that tape admitting narcotics activities. We ask for the Government to find out whether or not that tape recording or those bugs or wiretaps are in the possession of either the federal government or state authorities, and we indicated on our information it was probably at the CID headquarters on Park Avenue and that perhaps it may be located in the Eastern District of New York now, because Mr. Puccio, the head of the Criminal Division, was notified about these Lakeview Manor tapes, as I understand it, several months ago.

THE COURT: Let me put a question to you, Professor. Suppose such tapes exist -- and I do not know whether they do or not -- and suppose they show nothing more than what Leuci has now admitted to in his debriefings, why would you be entitled to them then?

MR. DERSHOWITZ: They would be relevant on the issue of what the Government knew at the time the tapes were made. That is, if the federal government --

THE COURT: Suppose the Government stands up and says they never knew then those tapes existed at the time.

MR. DERSHOWITZ: It seems to me that having the tapes and having the logs and finding out the circumstances

of the tapes would be extremely important for us to be able to establish that the Government either knew or should have known. Remember, negligent suppression is also a very relevant issue in this case. We do not know whether the Government knew. We do not know whether the state government knew. After all, the discovery motions made back in 1972 --

THE COURT: I am going to ask the Government to be keenly sensitive to that, (1) to find out if those tapes do exist; (2) if they do exist, to find out if they show anything more than Leuci has admitted to you in the debriefings.

MR. SAGOR: Your Honor, if I ever have any shortcomings in this case in the legal briefs, your Honor will understand, because I am jackassing, quote, around town on leads of Leuci's.

THE COURT: That is one of the duties of being an Assistant United States Attorney.

MR. DERSHOWITZ: We asked to have someone from the Eastern District here this morning precisely to respond to the general question of what information they have, because we were under the impression that the Eastern District earlier than Mr. Jaffe was pursuing leads involving Mr. Leuci.

THE COURT: I do think, Mr. Dershowitz, that it is up to you to see these people and do your own investigating.

I think the Government is required to do what it is doing here, but it is not required to conduct your investigation. It is required to turn over anything exculpatory. I have required that.

MR. DERSHOWITZ: That is fine.

THE COURT: But it does not have to go build your case for you or even collect your documents for you.

MR. SAGOR: I might comment on that, your Honor. Just let me interrupt you for a moment, Professor. I did speak to Mr. Puccio. I do not know if Mr. Dershowitz is aware of it, but what Mr. Puccio tells me is that Mr. Fisher, Mr. Rosner's lawyer, brought that to his attention. I do not know what you are trying to do or what is happening, and I do not know if you knew that or not, but apparently your own team told Mr. Puccio all about it in the presence of one Frank King, who, you know, Mr. Nadjari presently has under indictment. You did not tell me that information. I do not know if the left hand knows what the right hand is doing. Yesterday you suggested to me that Mr. Puccio may indeed have had that on tape. Mr. Puccio tells me he was never given the tape by Mr. Fisher and Mr. King.

MR. DERSHOWITZ: Absolute confusion. Obviously, if the tape was in Mr. Fisher's possession, we would not be asking for it. What happened was as follows, as I understand

it: People from Mr. Rosner's office went to Mr. Puccio and said, "We hear you are pursuing an investigation of Leuci. Do you have any information that will show that Leuci is lying?" Mr. Puccio said, "Well, we are vigorously pursuing this investigation, and if we find out that Mr. Leuci is lying that will certainly be brought out in court."

At that point Mr. Puccio was informed that there was some information that there was a wiretap installed by state or federal governments in the Lakeview Manor. Obviously, the tapes were not turned over to him. If we had those tapes we would not be asking for them.

In terms of pursuing our own investigation, we would very much like to do that. I have to admit I became a little sensitive and gun-shy as a result of your Honor's indication from the bench several weeks ago that subpoenas should not generally be served on governmental officials, and that is why we have been working through the Government.

THE COURT: I did not mean to say if you find them recalcitrant you can't. But what I meant to say and all I did say there was that it is not necessary to subpoena the United States Attorney when he is perfectly willing to give you what you want; that it is inappropriate.

MR. DERSHOWITZ: Fine. We are prepared to subpoena these tapes.

THE COURT: For any city government officials aside from Mr. Nadjari I suggest that you resort to your own subpoena as you have done in the past, so that you are protected.

MR. DERSHOWITZ: There is no problem.

THE COURT: I certainly did not mean to infer that you could not subpoena public officials; I just thought it was inappropriate where those public officials stood ready to give the information to you.

MR. SAGOR: Where pursuant to a phone call to the Eastern District or anyone else, we will have no problem.

MR. DERSHOWITZ: I had understood that since the U. S. Attorney was under the Department of Justice it would be better to work through Mr. Sagor rather than individually contact people in the Eastern District.

THE COURT: I think we will save time. If they have those things, get them. We are not determining whether Mr. Leuci is a liar but whether he lied on these particular questions about his own criminal involvement at the trial. That is the issue that I am going to try, among others.

MR. DERSHOWITZ: That is all we are interested in. The only other matter is that we ask that somebody from Mr. Nadjari's office be here, in the event that there were information in that office which was different from the

information available to the United States Attorney's Office.

THE COURT: I do not control Mr. Nadjari's office, he is the State Special Prosecutor, and I doubt my power to order him to be here. If he wants to be here, he can be here. We will leave it there.

Is there anything else this morning?

MR. DERSHOWITZ: Not that we have.

THE COURT: The exhibits are sealed, but the transcript of this particular proceeding is not sealed; is that clear? I do not know that anything has been said of such a nature.

MR. SAGOR: I do not think it needs to be sealed, your Honor. With the protective order, I do not see it.

THE COURT: All right.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
vs.	:	72 Crim. 782
EDMUND A. ROSNER,	:	
Defendant.	:	

Before,

HON. ARNOLD BAUMAN,

District Judge.

New York, July 1, 1974;
10.00 o'clock a.m.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the
Southern District of New york;
BY: ELLIOT G. SAGOR, Esq.,
JOSEPH JAFFE, Esq., and
JEFFREY T. GLEKEL, Esq.,
Assistant United States Attorneys.

ALAN M. DERSHOWITZ, Esq.,
Attorney for Defendant
and JEANNE BAKER, Esq., and
ELLIOTT TAIKEFF, Esq., of Counsel.

THE CLERK: United States of America versus Edmund Rosner.

Are counsel for both sides ready?

MR. SAGOR: Ready for the Government.

MR. DERSHOWITZ: Ready for the defendant, your Honor.

THE COURT: All right. Let us proceed, gentlemen.

MR. SAGOR: Your Honor, the record should reflect that we have served on Mr. Dershowitz, defense counsel, a brief.

I indicated to Mr. Dershowitz that we left a copy in chambers. I don't know if the Court has received its copy of the Government's brief.

THE COURT: I read it this morning.

MR. DERSHOWITZ: I am sorry, your Honor. I have not read it. I glanced through it. It is forty-one pages long.

I think the record should reflect that we appeared at 9:45 before Judge Wyatt and asked for a postponement of sentence pending the new motion, and it was granted and set for August 16th.

MR. SAGOR: Your Honor, there are one or two matters that Mr. Jaffe will speak to by way of housekeeping.

MR. JAFFE: Your Honor, with regard to the memorandum which was previously marked Court's Exhibit 1, we are going to hand up to the Court what we have had marked as Court's Exhibit L-B for identification, which is a retyped copy of that memorandum.

In addition, we want to state for the record that on Thursday, the 27th, in the afternoon, in conversations with Detective Leuci, Detective Leuci made two additional admissions not contained in the original memorandum, which are now contained in this memorandum. Those include on the occasion of the Clough and Trapp arrests, an admission that Leuci placed approximately one ounce of heroin in Richard Lawrence's car, and the second admission that after the Tolentino arrest, Leuci was aware that another detective placed approximately one ounce of heroin in Lawrence's car. On both occasions, the narcotics given were as rewards for making the cases.

I hand up Exhibit 1-B to the Court at this time and ask that it be sealed with the same regard as Exhibit 1 originally was.

THE COURT: Is there anything else?

MR. SAGOR: There probably will be, your Honor. Perhaps if Mr. Dershowitz could give us an idea of what witnesses he may call -- we have some housekeeping requests,

the excusing of several agent witnesses who are here. I would like to excuse them for the afternoon if their testimony will not be reached this morning.

THE COURT: Well, we will see how things go along.

Call the first witness.

MR. DERSHOWITZ: We call as Our first witness Detective Robert Leuci.

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R O B E R T L E U C I , called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q Mr. Leuci, will you tell us how long you have been a policeman?

A I have been a policeman for approximately thirteen years.

Q Starting in about 1961?

A October of 1961. That's correct.

Q Could you just briefly outline for us your career in the police?

A After conclusion of my time at the Police Academy, I was assigned to the 100th Precinct, in Rockaway,

as a patrol officer. I was there for a short period of time, for about six months or so, and then I was assigned to the Tactical Patrol Force. I was assigned to the Tactical Patrol Force for about two years. At the end of those two years I was then assigned to the Narcotics Division.

During my assignment at the Narcotics Division, I was in both the field operation unit and the special investigating unit of the Narcotics Division.

Q Could you date those --

A I was assigned to the Narcotics Division some time in 1964, and I was transferred eventually to the Special Investigating Unit some time in the early part of 1967 -- late '67 -- I'm not sure -- and I was there up until the early part of 1970. I then was assigned to the 114th Precinct, which was a detective unit in Queens, for a short period of time, and from there I went on loan to the Brooklyn District Attorney's office in Kings County.

MR. SAGOR: Excuse me, your Honor. I believe there may be a witness now in the courtroom. Your Honor requested that all witnesses be removed --

THE COURT: All witnesses are excluded from the courtroom. If there are any witnesses in the courtroom, please leave.

Who are the witnesses?

MR. SAGOR: I believe the gentleman in the white suit. If there is a -- he may wait outside the waiting room.

THE COURT: Is there anyone in court who might be a witness?

MR. SAGOR: Not to my knowledge, your Honor.

THE COURT: All right. Proceed.

Q You were dating for us your --

A I was then some time in the early part of 1970, I was assigned on temporary duty to the Brooklyn District Attorney's office. I worked there for about six or seven months. I was then reassigned to the 114th Detective Squad and then reassigned to the Special Investigating unit of the Narcotics Division.

Q And at this point you began your involvement with the so-called Knapp Commission?

A Well, actually you can like my involvement with the Knapp Commission -- I had several conversations with people from the Knapp Commission while I was working in the Brooklyn District Attorney's office.

Q When did those conversations occur, approximately?

A In September of 1970, some time around there.

Q And whom did you speak to in the Knapp Commission?

A I spoke to a Mr. Paul Rooney and Nicholas Scarpetta.

Q When did you first begin your relationship with the Federal Government?

THE COURT: I think the record ought to be clear about one thing:

I was at one time a member of the Knapp Commission. I have already said I never heard of Mr. Leuci during the period that I was a member of the Knapp Commission. I want to go on to say that I have discussed the matter with Judge Knapp, who advises me that there was one occasion while I was on the Commission when there was a preliminary conversation held with this man, in which he told him nothing, that he became productive some two days after my association with the Knapp Commission had been concluded.

I thought you ought to know what the facts were.

Q When did you have your initial contact with representatives of the United States Government?

A I would say some time in February of 1971.

Q And whom did you speak to from the Federal Government at that point?

A I spoke to a Mr. Will Wilson and a Mr. Michael Shaw.

Q Now, you had spoken to Mr. Scarpetta when he was

with the Knapp Commission?

A That's correct.

Q Did you continue to speak to him when he became associated with the United States Government?

A Yes, sir.

Q Was that a continuing relationship?

A Yes; it was.

Q With Mr. Scarpetta?

A Yes.

Q In other words, he kind of took you along with him when he went into the Federal Government?

A Yes.

Q And again, just to make it clear, when did you first meet and speak to Nicholas Scarpetta?

A In February -- in February of 1971. I think I may have met him for a short time -- my first recollection of meeting with Mr. Scarpetta is in the early part of February of 1971.

Q Did there come a time when various Government agents, Federal and City, began to ask you about allegations made against you regarding your own possible involvement in crime?

A Yes.

Q Would you tell me when that began?

A I would say that when you go to, like, say, specific allegations --

Q Well, let's start with general allegations.

When did anybody for the first time say, "Have you yourself been involved in any corruption, crimes or violation of police regulations?"

A I would say that would have to be in February of 1971, when I was speaking to Mr. Scarpetta.

Q And what did you tell him at that time?

A I told him that I had been involved, myself, in several situations that involved acting as an intermediary between myself and people that were subjects of investigations of the Narcotics Division.

Q Did you tell him --

A I told him --

Q Excuse me.

A I told him -- I described one incident specifically, and I told him that there were others similar to that.

Q Did you tell him when he asked you immediately whether you had been involved in any criminal or corrupt violations -- did you tell him about this one incident or did you first deny any illegal involvements?

A I didn't deny them, but I didn't tell him initially. In other words, you know, it was a running

conversation that went on for a long period of time, and during the conversation he repeatedly asked me about my own involvement, and I told him that that wasn't what I was there to talk about.

Q In other words, you didn't deny involvement; you simply said you didn't want to talk about the involvement?

A What I said was that I had a lot of knowledge about corruption within the entire criminal justice system and that I myself was involved to a certain extent, and "Let's continue our conversation. Let's talk about what you're trying to convince me to do."

Q This you told him immediately? There was never a time when Mr. Scarpetta or anybody else from the Federal Government asked you, "Mr. Leuci, have you yourself been involved in corruption or illegality", and you responded by saying, "No"?

MR. SAGOR: Your Honor, may I object to the form of the question? It has so many clauses in it --

THE COURT: Rephrase it.

Q Did you ever in your conversations with Mr. Scarpetta specifically deny that you were involved In occupt activities or criminal activities?

MR. SAGOR: Is this at any time, your Honor, or are we just talking about February 1971?

THE COURT: Well, I will let the examination proceed in its own way. Overruled.

A Yes, sir.

Q You did deny that?

A Yes, sir.

Q Could you recall that conversation for us?

A I can't recall the conversation, but I remember being asked that question by Mr. Scarpetta, I think, initially when I was first at the Knapp Commission office, and he kind of offhandedly said to me, you know, "How much are you involved? How much have you done?" And I said that I hadn't done anything. That's not what I was there for.

Q And for how long did these kinds of denials persist?

A Well, I think that, you know, when we left his office and went to his home and had these conversations, there were long conversations, and the question again many times arose during those conversations, "Were you yourself involved in these kinds of situations? Were you involved?" And I constantly denied it to him, and I told him that I was considering getting involved in this long-term investigation and -- and that, "I'll tell you at some point in time what I did," and I did eventually tell

him what I did, and that's all I did.

Q Let me clarify this:

There came a time when you said, "I have done things, but I'm not going to tell you about that," or, "That's not what I'm here for"?

A Yes.

Q Now, there was a time when you said you hadn't done anything?

A Yes.

Q For how long did you take the view that you hadn't done anything at all?

A I would say only several hours, from the time that I was speaking to him at his office, and then when I denied doing anything, and from there we went to his apartment, where we had these long conversations.

Q So pretty much on the first day, several hours later, you said, am I correctly characterizing it, "Yes, I have been involved, but that's not what I'm here for. Let's go to other matters"?

A Your description is about right, to the best of my recollection.

Q So some time on the first day Mr. Scarpetta was aware that you yourself had been involved in some criminal activities?

A Well, you know, I couldn't say what he was aware of, but --

Q Did you tell him?

A I told him that I myself was involved, yes.

Q On the first day?

A I'm not sure whether it was the first day. I'm not really sure.

Q Well, I'm not trying for great specificity here, but within the first period of time, the first few days, he was aware that you were involved in some kind of criminality?

A Yes, sir.

Q Let me focus on the second phase. The first phase is when he didn't know that you were involved in any criminal activity. The second phase I want to focus on is when you took the position that you were involved in some criminal activities but you didn't really want to talk about it.

For how long did that phase persist?

A I'm not sure -- I'm really not sure of exactly what you're saying.

Q Fine. I will try to simplify it.

At one point you said, "Nick, I'm involved, but I don't want to talk about it."

And later you said, "All right. I'll tell you

what I'm involved in."

I want to know for how long you kind of had the attitude with Scarpetta that, "Yes, I'm involved in crimes, but I don't want to talk about it."

A Well, that's not true. What he said was this: "Tell me what you did specifically specifically."

And I said, "I have done this kind of thing," and I described one situation. And then I said, "There are other situations similar to that, and that's all I have done."

Q All right.

Now, that discussion where you said, "I did it, and I'm going to tell you about one activity, and I have done a couple of others like it" -- did it occur immediately when you stopped denying your guilt?

A Yes.

Q So there was no period of time when you said, "Look: Yes, I have been involved, but I don't want to talk about it. That's not what I am here for."

There was no period of time in which that occurred, as I now understand what you are saying?

A That's true. That's true, although that kind of conversation did come up. I'm not saying that that didn't happen.

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THE COURT: Let me see if I can get the facts in order so that I unde stand them.

You met Scarpetta at his office, is that correct, and you had a preliminary conversation with him there; is that right?

A Yes.

THE COURT: Now, during that conversation at the office, did Scarpetta ask you about your involvement in criminal activities?

THE WITNESS: Yes.

THE COURT: What did you say at the office?

THE WITNESS: That I was not involved in anything.

THE COURT: All right. Then the meeting adjourned from the office to his home, I take it?

THE WITNESS: Yes.

THE COURT: And while you were at his home, I take it he again persisted in asking you about your own involvement; is that correct?

THE WITNESS: Yes.

THE COURT: Now, what was the first thing you said other than a denial at that meeting at his home?

THE WITNESS: Okay --

THE COURT: Is that what it --

THE WITNESS: Yes. He said, "You seem to have a lot of knowledge about corruption. Now, tell me what you have done. Tell me, you know, specifically what you have done. If we are going to become involved, if I am going to vouch for your credibility, I am going to have to know, I am going to have to be able to tell people that this guy is worth getting involved with in a long-term investigation. So tell me what you have done."

THE COURT: And what did you say?

THE WITNESS: I said I acted as an intermediary between people, detectives within the Police Department and members -- subjects of investigations, and I described one situation.

He said -- the exchange went like, "What do you mean? How did you do it?"

And I described the situation, and I said there were several other situations like that, and I said, "That's all I have done."

THE COURT: Was that on that first day, on the day you first met at Scarpetta's office and then went to his home?

THE WITNESS: I believe it was, but I'm not positive. I believe it was.

Q But it was plainly at the beginning of your

relationship?

A Yes.

Q The first couple of days, if not the first day?

A Yes.

Q Did Mr. Scarpetta at this point press you for the details of your involvement, or was he satisfied with your answer about this one incident and the fact that there were others like it?

A I'm not sure, you know. The term "pressing me" -- I think he questioned me very much the way you question me. It was slow and pretty precise, but at the same time it had double meanings, the things that he was asking me, so I think he was pressing me but not coming out and jumping up and yelling, "I know you have done other things. I can't imagine you being a detective for so many years and not doing other things."

What he was saying is, "Describe the kinds of corruption that you are familiar with, the kinds of corruption that you know about," and then saying, "You never were involved in anything like that; is that true?"

And I said, "Yes, it's true. I know about it, but I never was involved."

Q And then you described in detail one incident?

A Yes.

Q Did he ask you to describe in detail other incidents beyond the one you initially described?

A Yes; he did.

Q When did he ask you that?

A Around the same time I described the one incident.

Q And did you also describe the other incidents?

A Yes.

Q Why not?

A I'm not sure exactly why now. Then I felt that, you know, I didn't want to. I didn't want to describe the other incidents. I was prepared to describe one and, personally, you know, I didn't feel it was important.

Q Did you tell him precisely how many incidents there were in addition to the one you described?

A No. I told him that there were about three or four incidents.

Q About three or four in addition to the one you described?

A Well, no. About three or four including the one I described.

Q And could you try to remember the exact words you used when you said that to him? It's a long time ago, I understand.

A I said something to the effect that, "Nick, I was involved in acting as an intermediary between Detectives and subjects of investigations. The way it would work was that either the detective or the subject of the investigation would contact me through maybe another intermediary, and I would arrange a meeting between the dtectives and the subjects of the investigation, and for doing this I received payment of money."

I said, "That's how it happened. That's how it happened, and there are several situations like that and" --

Q Do you recall fairly specifically you told him that sometimes it would be the policemen who initiated the contact with you and sometimes it would be the subjects of the investigation?

A I think to the best of my recollection I told him that it was always the policemen that initiated the overture.

Q You never told him about any overtues being initiated by the subjects of the investigation?

A I don't think so.

Q Did he ask you whether or not any of these overtures were initiated by subjects of the investigation?

A I don't remember whethr he did or he didn't,

really.

Q Are you fairly certain in your own mind that at this point in time you indicated that all of the contacts were initiated by the police?

A I'm not certain in my own mind, but to the best of my recollection, you know, that's the way I described it.

Q And the four incidents that you specifically told him about at some point all involved situations where the police initiated the contact with you?

A No, sir. I described one specific incident, and in that specific incident the policemen were the ones that made the original overture to me. I told him that there were other incicents similar to that, and the other incidents, the overtures were made to me by, you know, the subjects of the investigation prior to the detoteives.

Q So that, in other words, among the four incidents that you described or told him about generally, at least some of them included situations where the overtures were made by the subjects of the investigation?

THE COURT: I want to keep this thing as precise as we possibly can.

We were talking about the first day, when you started to tell him about these things. Now, on the first day when you started to describe the situation you have just

repeated here -- we are limiting your testimony to that day. Do you understand that? We are limiting your testimony to that day at Scarpetta's home.

THE WITNESS: Okay. I didn't understand that. I thought that we were going on.

THE COURT: The question was not sufficiently precise.

All right. That day you told him that you were ivolved in about three or four incidents, in which you were the intermediary?

THE WITNESS: Yes, sir.

THE COURT: And that it was the policemen who initated the intervention?

THE WITNESS: Yes.

THE COURT: On that day, the very first day, Mr. Leuci, did you tell him that in some cases it was the criminal who originated the intervention?

THE WITNESS: No, sir.

THE COURT: All right.

I wish you would make your questions a little more precise in terms of time, Professor, so we will know precisely, so we will know precisely what was said and when.

MR. DERSHOWITZ: I will try.

THE COURT: All right.

Q On that first day, when you told him about the one incident, you had in mind three or four other incidents, as I understand it, or three other incidents?

A Yes.

Q Now, think back. On that day, did the three incidents that you had in your mind include any incidents in which the initiating party was the sbject ofthe investigation rather than the police?

A The fact of the matter, Mr. Dershowitz, as we now know, there were many more than those three, so at that time, you know, I was describing one incident to him. I told him there were several others, and, you know, I didn't differentiate in my mind at that point which were initiated by the police and which were initiated by the subjects of the investigation. But you knew at that time you were making a false statement; is that correct. You weren't telling the whole truth if you said there were three or four? You knew that, didn't you?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

Q Now, I want to get this clear. So when you told him about one incident and three or four others, you hadn't in your mind specified which ofthe three or four incidents

you were going to tell him about?

A That's right.

Q All right.

Did there come a time when you told him in detail about the other three or four incidents?

A Yes.

Q Could You tell us when that was?

A That was some time prior to the Rosner trial. There was during the preparation of the Rosner trial, where I spelled out specifically to the best of my recollection the four situations and actually three incidents and four situations.

Q Did any of those instances involve the subject of the investigation being the initiating party?

A No.

Q So at some point in time you told Mr. Scarpetta that you were involved as an intermediary not only with the police approaching you but also with subjects of the investigation approaching you?

A Yes, sir.

Q Did Mr. Scarpetta at that point ask you whether the subjects of the investigation had organized crime links?

A The conversations that I am describing to you now were 'way ahead, right up before the time of the Rosner

trial, and the conversations that I am relating to you now were really conversations that I did not have with Scarpetta but were conversations that I had with Bob Morvillo and Elliot Sagor, and at some time with Mike Shaw.

Q All right. Let's try to get back to specific time frames.

On the first night, when you told Mr. Scarpetta about this one incident and told him there were several others, did he ask you whether any of these incidents involved organized crime figures?

A I believe he did, yes.

Q And what did you answer?

A I told him that there were -- that I think it went something like this:

"I think I also can make cases against members of organized crime," and that's when -- you know, his answer to me -- his next question was something like, "Well, have you had any con tacts with members of organized crime?"

And I said, "Well, let's try, and let's try, and let's see what we can do."

I said, "I think I can do it."

Q Did he ask --

A So --

Q Excuse me. I didn't know if you were finished.

A Yes.

Q Did he ask you whether you yourself had been an intermediary in cases involving subjects who were themselves members of organized crime?

A No, sir. I don't recall him asking me that. I think to the best of my recollection I told him something like this:

"Nick, this is what I did." I explained it. I said there were other situations similar to that, and whenever he would go back to that line of questioning, I would adamantly deny being involved personally, and I would say, "We are here to talk about the possibilities of my getting involved in a long-term investigation, and let's talk about that. Let's talk about your convincing me that this is the right thing to do, because I'm not so sure it is," and that's the way the conversation went.

Q Let me understand this:

Did you adamantly deny your involvement in organized crime at that point, or did you say, "Yes, I have been involved, but that's not what we are here for. Let's talk about something else", or did you do some of both?

THE COURT: Well, I think we have already got that in the record. He denied that at the office. At Scarpetta's home he said, "This is the kind of thing I have

been involved in in three or four cases.

In substance, Scarpetta, in a low-pressure way, attempted to pursue those cases -- correct me if I am wrong, after I have finished -- and the witness refused to discuss those cases, saying in substance, "I am not here to talk about that. Let's see whether or not I'm going to go forward with cooperating with you in the case."

Is that right?

THE WITNESS: That's absolutely right.

Q When did the name Lusterino first come up in your discussions with Nicholas Scarpetta?

A I don't recall.

Q Did Mr. Scarpetta ever ask you whether you knew a man named Lusterino?

A No. I'm sure I mentioned the name first to Mr. Scarpetta or Shaw, one or the other, but I'm the one who brought the name up.

Q Will you describe to us who Mr. Lusterino is?

A John Lusterino is my father's sister's son. That's makes him my first cousin.

Q And could you tell the Court what you told me when we last spoke how you characterized Mr. Lusterino in terms of his organized crime connections?

A Lusterino is a man that spent many years of his

life, his young life, in jail. Prior to going to jail he was an up and coming -- I don't know how to best characterize him -- young turk. When he came out of jail, he was a member -- he became a member of organized crime, or he was a member of organized crime. It's a very difficult, nebulous kind of area. He has been described as a captain in the Joseph Colombo crime family.

Q You described him to me, did you not, as a captin in Joseph Colombo's crime family?

A Yes.

Q Did you tell Mr. Scarpetta that your first cousin was a captain in the Colombo crime family?

A I don't recall telling him that; no, sir.

Q Did he ask you, when you told him about Mr. Lusterino, did he ask you about his organized crime connections?

A I think now, of course, we are talking about some time a lot later on from our initial conversations, and we are into the investigation, and we were, you know, on our way, so to speak, and the name Lusterino comes up, and I talked to him about Lusterino, and we do talk about Lusterino's connection with organized crime.

Q Did he ask you whether or not any of your criminal activities involved Mr. Lusterino?

A Yes.

Q And what did you tell him?

A I told him that the activities that I had described to him as far as acting as an intermediary between policemen and subjects of investigations, my cousin had played an active part as far as coming to me and asking me to intercede and to act as a mediator.

Q So you did at some point -- you are not sure when -- you did at some point tell him that Lusterino had approached you and asked you to act as an intermediary in contacts with the police?

A I told him that, you know, but I told him that I had also had gone to Lusterino and asked him questions.

Q Both ways: That you had acted as an intermediary of the police to Lusterino and Lusterino to the police?

A I told him that I had spoken to Lusterino with questions that I had and Lusterino had come to me and spoken to me about questions that he had. He had come to me and asked me for favors, and I had gone to him and asked him for favors.

Q Did Mr. Scarpetta ask you if any of your criminal activities had involved Mr. Lusterino?

A Yes.

Q And what did you say?

A I said yes.

Q Did there come a time when Mr. Scarpetta told you that he was aware that Lusterino was a captain in the Colombo family?

A No.

Q Did he at any point ask you whether you knew about Mr. Lusterino's connections in crime? Did he ask you, for example, what family he was from?

A I'm not sure whether or not this was Mr. Scarpetta that asked me that. I think that -- that conversation was had, but I think it was, as the best of my recollection, with Assistant United States Attorney Mr. Shaw, Mike Shaw.

Q Okay.

When did you have your discussions with Mr. Shaw?

A All during the same period of time. My contacts with the United States Attorney's office were such that there contacts outside of the office, and there were meetings that were held at the home of Mr. Shaw and at Mr. Scarpetta's home.

Q Could you give us an approximate time frame?

A All during the period of 1971 into right prior to the time that I surfaced.

Q Now, we have a time frame for Scarpetta. The meeting with Scarpetta is some time in February of 1971. Can you give us an approximate time when you began meeting with Mr. Shaw?

A I think also in February, towards the end of February.

Q Did you meet sometimes together with Mr. Shaw and Mr. Scarpetta?

A Often, yes.

Q Did you sometimes meet alone with just Mr. Scarpetta and just Mr. Shaw?

A Yes.

Q Now, there were some tape recordings made of your conversations with Mr. Scarpetta. Could you tell us the circumstances under which they were made?

A Now we go back to the time after I leave the Knapp Commission office, and we go to Mr. Scarpetta's home?

Q February.

A February. We begin talking, and obviously Mr. Scarpetta -- it was obvious to me that Mr. Scarpetta's motivation was to convince me that I have some very important information and that it is very important that I get involved in a very dangerous and very long-term

investigation having to do with corruption within the entire criminal justice system.

The exchange between Scarpetta and myself many times are heated. The conversation then becomes a friendly one, and there was a lot of conversation about my family and a lot of emotional conversation.

I think these tapes that are made, you know, at that time, the beginning, Scarpetta tells me that, "Listen: I'm going to talk to you again tomorrow. I'm not taking any notes. I'm going to record what you are saying. I'm going to listen to the recording tonight, and I'm going to ask you some questions about some of the things you are talking about tomorrow. Is it okay with you?"

I said, "It's not okay with me, really, but if that's what you insist on doing and if you feel it's really that important, go ahead, but those are my recordings."

Q Why did you agree to have them recorded if you were objecting to it? You were a free person at that time, weren't you?

A Yes. I think that, you know, Scarpetta and myself, I think he for his reasons and me for my reasons were trying to establish some kind of a, you know, relationship.

Q What were your reasons?

A Well, my reasons were that I wanted to try to convince Scarpetta at that time that he should try to understand, that he was a member of this Knapp Commission, that to me in many ways we were doing things that I felt were wrong and unjust, and I tried to convince him, you know, that the corruption, you know, should not only -- the investigation should not only be centered upon the Police Department, that there's so much more going on, and I wanted to convince him that I'm a typical example of a policeman that's been nothing else but a policeman all my adult life and that I wanted him to understand me, and in the beginning I think the relationship was one that he had spoken to many policemen and that he had a distaste for policemen, especially detectives, and that I was trying to develop some kind of relationship to him.

So in the beginning, to allow him to make that recording, I felt I was showing, you know, that I trusted him and that I hoped, you know, that he would trust me.

Q When did the recordings begin? In the office or at his home?

A At his home.

Q Right away when you got to the house, did he turn on the tape, or did you have some discussion off the record

and he turned on the tape?

A All the discussion was off the record at the beginning. He made that clear to me. I think we had dinner and a couple of drinks first, and then he spoke to me for a period of time, and he brought out the tape recording.

THE COURT: Did he record on the first occasion when you were at his home?

THE WITNESS: Yes.

Q But there was a period of time before the recorder was turned on when you were socializing with him?

A I guess you would call it socializing.

Q Did you initially resist? When he wanted to turn on the recorder, did you say, "No"?

A Yes.

Q And what did he say in response to that?

A He said, "This is a recording that I'm only going to utilize in my conversations with you and get a feeling of you, and after you leave here I am going to listen to them." He said, "These are your recordings. These are your property. When I'm done with them, I'm going to give them back to you."

I said, "Do I have your word on that?"

He said, "You do."

So I said no concern, one way or the other, what was recorded, because I believed what he told me.

Q Approximately how many hours of conversation would you estimate were recorded?

A That's difficult to say, because the recordings, I think, were turned on and turned off. The recorder was turned on and turned off.

Q Could you tell us when they were turned on and when they were turned off? In the course of one conversation, was it sometimes turned off?

A No. For example, the tape would run out, and he would turn it over, or we would have dinner and turn the machine off.

It wasn't treated as a debriefing type of recording. There were times that a lot of conversation wasn't recorded. There were times there were things that I specifically spoke about that he wanted to record, and the way he explained it to me was that to listen to it again that evening and then be able to question me about it the following day.

Q Did there ever come a time when these recordings were being made when you said, "Hey, Nick, I want to tell you something, but I don't want the tape recorder on for this"?

A What happened is that as you're talking, you forget that there's a recorder on, and especially if it's over a longer period of time, and most of our conversation was a very emotional conversation, and so I really at one point in time, I forgot that there was a recorder, so I just kept on going, and it was like a very heated emotional exchange between Scarpetta and myself, and I didn't even realize the recorder was on.

As far as I was concerned, at that time certainly if I thought there was any chance that anyone else would have the opportunity to listen to these recordings, I would have made sure that that machine was turned off at that time.

Q Did there come any point in time, to your recollection, when the machine was on and you were talking and you said, "Hey, let's turn it off for now"?

A No.

Q There was no point in time where you were asked to have the machine turned off?

A Not that I remember, no.

Q It happened, as you recall it, the other way? It was off, and Scarpetta said, "Now, for this I want to turn it on"?

A Mr.Dershowitz, I want to make it perfectly clear

that I had no concern as far as those recordings being made public to anyone, and it didn't matter to me whether the machine was on or shut off.

Q Under what circumstances did Mr. Scarpetta stop recording your conversations?

A When we stopped to eat, as I remember.

Q I'm sorry. I didn't mean that. I meant, under what circumstances did he stop the practice?

THE COURT: When did he terminate the makings of these recordings?

THE WITNESS: Oh, I see what you mean.

A I think after he speaks to Special Assistant -- I mean, Assistant United States Attorney Mike Shaw and comes to me and then tells me that the recordings --

I'll try and reconstruct it the best way I can remember.

Scarpetta comes and tells me that he was not all that familiar with Federal law and that he had a conversation with Mike Shaw and told Mike Shaw that he had made several recordings with me and that Mike Shaw told him, "Well, that's great. That's 3500 material," which I didn't have the faintest idea what 3500 material was, and I don't think Mr. Scarpetta knew -- well, I guess he did, but he told me he wasn't familiar with it, and Mike Shaw

was now pressing him for those recordings, and at that point in time I told him that I had better get those recordings back right now.

Q In other words, there came a time when Mike Shaw said to Scarpetta and you that these were going to be 3500 material?

A Mike Shaw told me that it was very important, that those recordings in Federal Court could be considered evidence and that it was very important that those recordings be maintained.

I told Mike Shaw at the time -- I think it was the first -- my first meeting with Mike Shaw, that these recordings were not made by a Federal agent. Mr. Scarpetta wasn't a Federal agent. Those recordings were my personal property and that I wasn't about to turn them over to him or anyone else and that I wanted those recordings back and if I couldn't get those recordings back that there was no way that I was going to continue, you know, with this investigation.

Q Did Mr. Shaw at that point indicate that you could have those recordings back?

A Mr. Shaw asked me if it would be all right if he made a memorandum, how would I feel about a memo describing the criminal activity that I described on the record-

ing. That has to be done, he told me. That's the least that has to be done. I told him, "I don't care about that. I'm not concerned about what I said criminally on the recording. I'm concerned about what I said about myself and my family, and I want that back."

I said, "I'm not concerned about my criminality. You can make a memo out. You can make twenty memos out, but I want those recordings back."

Q Did Mr. Shaw at some point say to you, "You can have those recordings back"?

A Mr. Scarpetta eventually told me that I could have the recordings back.

Q Did Mr. Shaw ever tell you you could have the recordings back?

A Yes; I think he did, too.

Q Mr. Shaw told you that you could have the recordings back after having told you that they were 3500 material and had to be preserved?

A It was during the same -- I think it was during the same conversation. I'm not sure. But there came a time that Mr. Shaw told me that I could have the recordings back.

Q Did anybody ever ask you -- Mr. Shaw or Mr. Scarpetta -- whether you would object to a transcript being made of the recordings?

A I don't thinkthe subject was ever brought up.

Q Nobody asked you if you would object to a transcript being made of the recordings?

A No.

Q Let me ask you this now: if Mr. Shaw had asked you, thinking back to that period of time, whether you would mind there being a transcript made and then you being given back the tapes and everything other than the transcript

of your discussion of your crimes, would you have objected?

MR. SAGOR: Your Honor --

THE COURT: Sustained.

MR. SAGOR: Also, your Honor, I have stayed down, but this is a matter that has been discussed fully at the trial. Mr. Krieger interviewed --

THE COURT: I am aware of that.

MR. SAGOR: Yes, your Honor. And let the record reflect that I have also turned over to Mr. Dershowitz this morning Mr. Scarpetta's memorandum that he made in connection with giving back Detective Leuci the tape recordings, which was sent by the government as Court Exhibit 4.

THE COURT: Yes.

The objection is sustained.

I should tell you, Professor, that we have been through this discussion, the matter of the destruction of the tapes --

MR. DERSHOWITZ: If your Honor please, I was not aware until this morning that there was ever a disclosure made -- I may be wrong -- that at the time the tapes were returned to Mr. Leuci for his destruction there was a discussion and an acknowledgment that this was 3500

material and would have to be preserved.

MR. SAGOR: The government acknowledges no such condition, that the conversation with Mr. Leuci is a binding statement of what the law is.

MR. DERSHOWITZ: I am just eliciting evidence as to that.

THE COURT: Proceed.

Q When the tapes were returned to you, was it clear to you that you were going to destroy them?

MR. SAGOR: Your Honor, can there be conversations elicited by Professor Dershowitz as opposed to characterizations? I think we will move along faster, and the testimony will be clearer.

MR. DERSHOWITZ: Fine. I will confine my examination to that.

Q Did you tell Mr. Scarpetta and Mr. Shaw that you would destroy the tapes upon their being returned to you?

A To the best of my recollection, the conversation went something like this: "Here are your tapes. What are you going to do with them?"

Q What did you say?

A "I'm going to destroy them."

Q Did you in fact destroy those tapes?

A Yes.

Q You burned them?

A Yes.

Q Could you just, without getting too dramatic, describe the circumstances under which you burned them?

MR. SAGOR: Objection.

MR. DERSHOWITZ: I am sorry. I withdraw the characterization.

Q Can you describe the circumstances under which you burned the tapes?

MR. SAGOR: Objection.

THE COURT: You burned the tapes?

THE WITNESS: To the best of my recollection --

THE COURT: Just a moment. Where did this event happen?

THE WITNESS: It happened in my barbecue pit. To the best of my recollection, I pulled the tapes apart and threw them into the barbecue fire. I remember destroying them, and to the best of my recollection I burned them, box and all, or pulled them apart and burned them.

THE COURT: And about when was that?

THE WITNESS: I guess the early part of February or the latter part of February.

THE COURT: Well, you said some moments ago that you met Mr. Shaw for the first time towards the end of

February, did you not?

THE WITNESS: Yes.

THE COURT: Now, having that as a frame of reference, if you are correct in that statement, when was it that you burned the tapes?

THE WITNESS: Okay. Shortly after my conversation with Mr. Shaw, the tapes were returned to me. The exact dates I don't know.

THE COURT: Some time late February or early March?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q But certainly it wasn't as late as May or June of 1971?

A I can't say that certainly. It was some time after that, later on. I don't know when it was.

Q Did you have any other conversations with members of the U.S. Attorney's office or agents of the Federal Government that were recorded?

A During the course of the investigation, I made recordings with -- in one particular instance --

MR. SAGOR: I am going to object, your Honor, to matters under investigation. I think Mr. Dershowitz is getting to debriefings.

THE COURT: He has a right to ask whether or not any of those sessions were recorded.

MR. SAGOR: I object to whether Detective Leuci made surveillance on any other members of the Department.

THE COURT: I don't think he is asking that.

MR. SAGOR: I think the witness was starting to answer that.

Q During this period of time when you were being debriefed by the United States Attorney's office or members of the Knapp Commission, were there any other recordings made other than those --

THE COURT: There is a suggestion implicit in your questions that I am not sure is in accordance with the facts.

(To the witness) Once you were turned over to the Knapp Commission by the U.S. Attorney's office, did you continue to work with the Knapp Commission?

THE WITNESS: No.

Q During the period of time that you were working with the Crime Commission, were any other recordings made of your discussions?

A Not that I know of.

Q Did Mr. Scarpetta ever ask you whether you were involved in any kind of drug dealing activities?

A Yes.

Q Could you describe the question and how he put it?

A Mr.Scarpetta --

MR. SAGOR: Your Honor, could we have time and place, just generally?

THE COURT: Yes. Fix the time and place.

Q In February, when you first started to meet with Mr. Scarpetta in his office and in his apartment, did he ask you whether you were involved in drug dealings?

A No, sir.

Q When did he first ask you whether you were involved in drug dealings?

A Once we got under way with the investigation, Mr. Scarpetta brought to me a series of closed investigations. There were allegations that were made against me by people that either I had arrested or people who thought that I had them arrested, and these allegations were shown to me. Mr. Scarpetti asked me about them, and part of those allegations was that I had sold narcotics through or to one Richard Cardi and Vincent Cataldo. There was a series of Cardi fantacies. There were these whole Cardi allegations.

THE COURT: The question was, when for the

first time did Scarpetta ask you whether you were involved in drug dealings?

THE WITNESS: That happened, I would say, some time in March.

Q In March of '71, he didn't simply ask you; he showed you various files of complaint allegations, complaint files?

A Yes. He showed me Police Department -- our Internal Affairs Unit files, showing allegations made by several people against me, by people who either I had arrested or thought I had them arrested.

Q What did he ask you about those files?

A He asked me if there was any truth in any of the files.

Q What did you say?

A No, there was not.

Q And these files included Cardi?

A These files included Cardi.

Q And Jacobs?

A No. Jacobs never made any allegations against me. There were several allegations that at this point -- I don't remember which ones they were, but there were a number of of allegations -- there were a number of allegations, and what they were were more than allegations. There were investigations that had been conducted by the Police Department Internal Affairs Division, and he told me the investigations, and they had been closed and unsubstantiated or

without results, and he asked me if there was any truth in any of the allegations, and I told him that there was not.

Q Did the allegations include an allegation by Mr. Diaz, do you recall?

A Absolutely not.

Q But it did include allegations by Mr. Cardi?

A Yes.

Q Do you remember approximately how many allegations there were that you were confronted with?

A Something like ten or twelve.

Q And to the best of your knowledge, do you know where these files came from? Did they come from the Special Investigations Unit, from departmental disciplinary files, from the Civilian Review Board?

A I have no idea.

Q Mr. Scarpetta never told you this was a complaint filed in this agency or that agency?

A Oh, I see what you mean. I'm sorry. Yes. I knew that they were fromour Internal Affairs Unit of the Police Department.

Q And you unequivocally denied any truth as to any of the allegations of criminality in the files?

A That's right.

Q Did Mr. Scarpetta ever ask you, during this

early period of time, again, whether you had ever given money to narcotics pushers or narcotics addicts?

A Not that I recall; no, sir.

Q Were any such allegations contained in the files that he showed you, to the best of your recollection?

A I think so. I'm not sure.

Q So in that sense, by asking you whether or not there was any truth in any of the allegations, he was in effect asking whether you had ever given money to any narcotics addicts or pushers?

A Well, no. Not if you phrase it like that. I don't remember him asking me that question, if I had ever given money to any narcotics addicts or pushers. If you're asking me -- well, I don't remember him asking me that specific question, Counsellor.

Q In other words, he would show you a file, but he wouldn't press it as to the details of the file?

A I see. I'm sorry --

MR. SAGOR: I object t the characterization. Could we have conversations?

THE COURT: Overruled. Proceed.

A No. He showed me the file. We would go through the file. There were specific allegations, and he would ask, "Is that true?" I would say, "No." And we would

go to the next one, and I began saying, "No," when he opened up the page, and I began saying "No" when he closed the page of the last file.

I never admitted to any of those.

Q In the Cardi file, did it include allegations that you paid money to Cardi or received money from him?

A Yes.

Q And therefore you were shown that allegation?

A Yes.

Q And you were asked whether it was true?

A Yes.

Q And you denied it?

A Yes, and it isn't true.

Q We will get to that at an appropriate time.

A Okay.

Q Did Mr. Scarpetta ever ask you whether you took any money that you had secured as a result of an arrest, that you took for your own personal use, any money that you had obtained as a result of an arrest?

A I think the best way to answer that, to continue along this way, Mr. Dershowitz, is that when I decided to undertake the investigation and we were now proceeding with this investigation, there were a lot of agencies involved; there were a lot of people involved, and I was the main

subject of the investigation. In other words, I'm the main conduit of the investigation. There wasn't time to talk about myprior misconduct, and if it did arise, I simply denied it. I said, "This is what I have told you that I have done, and I have done other things like that, and that's it. You're crazy to continue asking me."

And he might have said, "Bob, is there anything else?" And I simply said, "Listen. There's nothing else. I'm starting today, and I'm going ahead, and that's it."

So there never really did come a time that, did I take money from a dope pusher, or did I give money to a dope pusher. Those things just didn't happen.

Q So the vast majority of time spent during these debriefings had to do with what you could do for the government and your knowledge of crime, and very little time was spent on your own past criminal involvement?

A We were talking about -- when you are saying during these debriefings, you are talking about what time span?

Q February.

A February. That's right. That's right partially, but I think that most of the time was spent about my motivation or whatever Scarpetta could find, whatever spot he could find that he and I could agree upon.

Q What discussions did you have with Mr. Scarpetta or with Mr. Shaw about these crimes that you admitted to? Did anybody suggest to you that you would be prosecuted for them or that you would not be prosecuted for them?

MR. SAGOR: May we have the time, your Honor?

MR. DERSHOWITZ: In February.

A No one suggested to me that I would or would not be prosecuted. I simply assumed that I would not be.

Q On what basis did you assume that you would not be prosecuted in February, when you made the admissions?

A On several bases. First of all, I thought the things that I had admitted to were past the statute of limitations, No. 1, and, No. 2, I thought the things that I had admitted to couldn't be corroborated. I was sure they could not be corroborated to, other than my own mouth, in other words, my own admission, and I certainly hadn't been given my Miranda warnings or things like that. So there's no doubt in my mind that I could not be prosecuted for things that I had admitted to.

Q Again let me get specific dates. What were the dates, the last date of criminal conduct that you admitted to in February of 1971?

THE COURT: I don't understand the question.

Q What was the date of the last crime that you

admitted to Scarpetta in 1971?

A I told him, as I remember it, I think to the best of my recollection, it happened in 1967 or early '68.

Q So three or four years earlier?

A Yes.

Q And you thought that that was beyond the period of the statute of limitations?

A Yes. By the time that anyone could get around to thinking about prosecuting me for it.

Q So your view is that the statute of limitations is what? About three or four years?

A No. Around five years, I thought, for narcotics crimes. But really, I thought, the main thrust of it was that I was sure that it couldn't be corroborated, and they couldn't use it against me, since, you know, I had admitted it freely and without any kind of warning, really.

Q You had gotten no warning? Scarpetta had not told you that if you admitted a crime that it might be used against you?

A Absolutely.

Q Had he told you anything to suggest the contrary? Had he told you anything like, "Anything you tell me will never get beyond this room"?

A Yes. That's very true. That's true, yes.

Q Did you understand that as a commitment by him that you would not be prosecuted for those crimes?

A Well, again, you know, the conversation had not -- had very, very little to do with my past criminal conduct or my misconduct as a policeman. The conversation had to do with many, many other things, and there was very little time spent on that.

Q Very little time was spent on your --

A On my own misconduct.

Q Okay. Let's move from Mr. Scarpetta briefly to Mr. Shaw. Can you tell us when you had conversations, approximately when you had conversations with Assistant United States Attorney Shaw?

A Well, to the best of my recollection, it's, again, in late February, early March.

Q You began having conversations with him, as I understand it, in late February, and they continued through March of 1971?

A Yes, and --

Q Did you tell him -- Mr. Shaw -- about any crimes that you had not told Mr. Scarpetta about?

A No. Not that I remember.

Q Did you tell --

A I'm sure I didn't.

THE COURT: He is sure he did not.

Q You are sure you did not tell him about any crimes other than the ones you mentioned to Mr. Scarpetta?

A Yes. There was a time when we had a meeting at Mike Shaw's apartment, I remember, and there was a member of, at that time, DEA or BNDD there, Mr. Andrew Tartaglino. I doubt if Mike Shaw was there. I think Mike Shaw was late, and Mr. Tartaglino and myself, I described the situation that I was involved with with several or a couple of ex-Federal narcotics agents, and I don't remember if Mike Shaw was there or not. I don't remember if he came in during the conversaton or after the conversation. But that was an additional thing to what I had mentioned to Mr. Scarpetta.

Q Could you tell us about that incident?

A I told Mr. Tartaglino that I had been involved with two members of the Bureau of Narcotics in a situation that involved a searching of an alleged narcotic dealer's home, and $200 was taken from the home by one of the Federal agents, and some time later on, that $200 was shared between the two Federal agents, my partner and myself.

Q You told him that you had received approximately $50?

A Yes.

Q When did you tell him that this event had occurred?

A I told him to the best of my recollection it happened some time in 1965, 1966.

Q Okay. Now, moving to a different time frame, when did this discussion with Mr. --

A Tartaglino?

Q -- Tartaglino occur?

A This discussion takes place, I would say, at a time when it's being decided to bring in the Bureau of Narcotics or Drug Enforcement Administration, into the investigation, that they would actively become involved in the investigation, so I would guess that it would be some time in March or April of '71.

Q Now, to the best of your recollection, who was present during this discussion?

A Mr. Tartaglino.

Q Who else?

A Myself, and at some point in time, Mike Shaw. I remember distinctly that I went there, and Mike wasn't at home. Mr. Tartaglino was there. I think Mike's wife was there. And Mr. Shaw eventually arrived. Now, I don't remember him being there during thetime when I'm talking to Tartaglino about Federal narcotics agents.

Q But this discussion did take place in Shaw's home?

A Yes.

Q Was it recorded?

A No, sir.

Q It was not. Now, Mr. Shaw was involved in that discussion at some time?

THE COURT: Wait just a minute, Professor. He didn't say. He said the subject came up in the home, that on one occasion he has indicated he is not sure whether Mr. Shaw walked in on the conversation or whether Mr. Shaw walked in after the conversation that he was having with this agent, Tartaglino.

(To witness) Is that correct?

THE WITNESS: That's correct.

THE COURT: That's what I understand the net of his testimony to be on the subject.

Q Could you tell us how long the discussion on that entire evening was?

A With Mr. Targaglino?

Q With Mr. Tartaglino and Mike Shaw.

A Several hours, to the best of my recollection.

Q And it is your recollection that Mike Shaw came late to that discussion?

A Yes.

Q About how late? Could you estimate?

A I would say about 45 minutes to an hour late.

Q And so the first part of the discussion occurred with just Mr. Tartaglino?

A Yes.

Q And it was during that period of time that you recall the discussion about this $50 incident occurred?

A Yes.

Q It is possible, however, as I understand your testimony, that Mr. Shaw may have walked in while that conversation was occurring?

A That's true. It's possible.

Q Did Mr. Shaw at any time question you about this incident?

A No, sir.

Q Did he at any point indicate to you that he was aware of it?

A I don't recall.

Q Did Mr. Tartaglino write down that incident, do you know, make any notes of it?

A I'm sorry. I don't remember if he did or didn't. I would only assume that he did.

THE COURT: Don't assume anything. Just tell us what you know, please.

Q Can you tell us who Mr. Tartaglino is?

A At that time he was the Assistant Director to the Director of the Bureau of Narcotics. He was the Assistant Director of the Bureau of Narcotics, and today I think he's the Chief Inspector of the Drug Enforcement Administration.

Q Is that all?

A Yes.

Q At that time he was an employee of the Federal Government?

A Yes.

Q Do you know -- if you don't, don't speculate -- do you know where his offices were located? Had you had any opportunity to meet with him in his offices?

A Yes.

Q Where were his offices?

A In Washington.

Q Did he have an office in New York?

A He had a -- I think there's a branch office here in New York. I'm not sure. But his office, his own office -- I'm saying Mr. Tartaglino's office is in Washington. I know it's in Washington.

Q Did you tell Mr. Shaw at any time about what you had told Mr. Tartaglino?

A I think I may have mentioned to Mr. Shaw at some point in time the name of the agent that was involved in that

situation and that I had said that I had at one time some misgivings about the honesty of that agent, and at that time the agent was in a very sensitive position, and I said that as far as I'm concerned, I'm satisfied today that he is very honest and a very reputable guy.

Q But did you tell Mr. Shaw that you yourself took $50 in that arrest, during that arrest?

A I don't remember. I told Mr. Shaw -- I think I made it pretty clear to Mr. Shaw that there was a time that I knew that this agent had been involved in some kind of action or act that was of misconduct, the type of misconduct.

THE COURT: I think the question that is being put to you is, did you ever tell Mr. Shaw about the incident in which $200 was split, $100 to the Federals, and $100 to you and your partner? Did you ever tell Mr. Shaw about that?

THE WITNESS: Not that I remember.

Q Did you ever tell Mr. Scarpetta about that?

A Not that I remember.

Q Did you ever tell anybody other than Mr. Tartaglino about that?

A Yes.

Q Who?

A I told a representative from Mr. Tartaglino,

a Mr. Goe.

Q This was at a different time?

A A different time.

Q Could you describe the circumstances under which that discussion occurred?

MR. SAGOR: Could we have the time, your Honor?

THE COURT: Fix the time, please, when it was.

THE WITNESS: I don't remember. I don't remember when -- I remember at some point in time I sat down with people from the Internal Affairs Division. I call them Internal Affairs. They are from the Inspection Unit of the DEA Drug Enforcement Administration, and we talked about the possibilities of corrupt Federal agents, and I described one situation that I had already described to Mr. Tartaglino to Mr. Goe, and I described in that situation that I had been present when a New York City detective, my partner, and two Federal agents, when we without a search warrant entered the house, searched the house looking for narcotics, and sometime later on I was told that one of the Federal agents had taken $200 and that I had shared in the $200.

Q By the way, was there an arrest made?

A At that time?

Q Yes.

A No. There was no arrest. There was no

crime. There was no contraband in the house.

Q In other words, not only did you take themoney and share it, but you had also engaged in what you would regard as an illegal entry?

A Well, we entered the house without a search warrant. It was a situation that the informer told us that this fellow was selling narcotics. We went to the location, entered the house, searched the house and found nothing. We went to a restaurant, to a coffee shop and had coffee after the incident, and one of the agents came over to me and said, "This is for you." He gave me $50. I said, "What happened?"

He said, "There was $200 up there."

He gave $50 to my partner and $50 to his partner.

Q So there was a simple burglary rather than an investigation?

THE COURT: It was an unlawful search in which somebody turned out to be a thief; is that right?

THE WITNESS: Yes.

Q But the subject of the search was entirely innocent?

A Well, I had very good information that he wasn't entirely innocent, that he was selling narcotics. At the time we entered the apartment, we found no narcotics.

Q All you found was money?

A Yes.

MR. SAGOR: Objection. The witness didn't say he found it.

THE COURT: Yes. He said somebody else found it and gave him $50.

Q When you were given the $50 by this Federal agent, were you aware that no drugs had been found in the house that was searched?

A Yes.

Q Were you also aware that the search had been conducted without a warrant?

A Yes.

THE COURT: Are you suggesting by implication that it would have been all right if drugs were found in the house?

MR. DERSHOWITZ: No, your Honor --

THE COURT: We will take our morning recess. When we come back, I want the first two rows on either side reserved for the working press.

All right. Ten minutes.

(Recess.)

MR. JAFFE: Your Honor, may we note on the record that Mr. Giuliani is appearing at the counsel table.

THE COURT: All right.

CONTINUED DIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q Mr. Leuci, I just want to clarify one point we talked about before the break before I get on to new matters.

At some point Mr. Shaw had a discussion with you about 3500 material, is that right?

A Yes.

Q And did he explain to you what 3500 material was?

A He began -- he began explaining to me what 3500 material was and I think he was trying to impress me at the time how important it was and I was having none of it. I mean, he started the conversation with saying, "You realize -- you know, this is very important."

I said, "Listen, I don't want to hear about it, I don't care. As far as I'm concerned, you promised me and Scarpetta promised me that those tape recordings are my property and that they were going to be returned to me and that's all I want to know and I want them back," and that is as far as it went.

Q But you understand what he meant by 3500 material?

A No. I never really understood what 3500 material

was until your client, Mr. Rosner, wanted to buy it from me.

Q But the word 3500 material came up in your discussion with Mr. Shaw.

A The word was mentioned, yes.

Q And there was some discussin about it? You understood that there was a rule requiring the government to turn over to the defendant something called 3500 material.

A I didn't understand what 3500 material was at all, really.

Q But the word was --

A The word was mentioned, yes.

Q And it was not unfamiliar to you?

A It was unfamiliar to me.

Q But after it was mentioned it was no longer unfamiliar to you, it stuck in your mind?

MR. SAGOR: Objection.

THE COURT: I assume if he heard it once the next time he would have to admit he heard it previously. Go ahead.

MR. DERSHOWITZ: That becomes very important, your Honor, as we will see.

THE COURT: Go ahead, I won't limit you.

Q Could you date for us this discussion about 3500 material?

THE COURT: This is the discussion with Mr. Shaw

now?

MR. DERSHOWITZ: With Mr. Shaw, yes.

THE COURT: To the best of your recollection, Mr. Leuci, tell us what was said by Mr. Shaw and by you about this 3500 material.

A I remember we were riding in the car, in a car on the East River Drive, myself, Scarpetta and Shaw. Shaw was telling me that they had prepared this memorandum, but that he would prefer to have the tapes.

I told him that as far as I was concerned, you know, I wanted those tapes back and those tapes were my property and I was going to get them back, if not then I'm not going any further with anything and as far as I was concerned, you know, they were taking something that was mine and they had been promised to me. The word 3500 material I remember now in retrospect and going back over all those times being mentioned, and, again, it became such a familiar, you know, phrase to me. Later on when I became involved with Mr. Rosner I, of course, realized now what 3500 material really is.

THE COURT: But on that evening, on that occasion that you are telling us about, did Mr. Shaw or anyone else explain to you what 3500 material was?

THE WITNESS: No. And as I remember it, I don't

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think it was Shaw telling me that this is 3500 material, I think, as I remember it, it was Shaw telling Scarpetta.

Q You overheard the discussion?

A Yes.

Q And Shaw did tell you that he preferred to have those tapes?

A Oh, yes.

Q For purposes of turning it over to the defendant?

A Yes.

Q As 3500 material?

A Well, I didn't understand that, you know, as 3500 material, Brady. All these kinds of things, you know, I had no knowledge of. But for purposes of turning -- not necessarily turning it over to the defendant. I didn't even think -- I would have gotten even more upset about it if I thought that was possible. I thought it was just going to be that they were going to sit down with agents or people or anyone were going to listen to these recordings.

Q Did there come a time when you testified in front of the grand jury in the Rosner case?

A Yes.

Q Who was the government official that was in the grand jury room examining you?

A I think it was Mr. Shaw.

Q Did Mr. Shaw at any point in the grand jury room ask you about any prior crimes that you had committed?

A I don't recall.

MR. SAGOR: Objection, your Honor. What is the relevance of that? This grand jury testimony was turned over at the Rosner trial as 3500 material. What is the point?

THE COURT: Professor Dershowitz wasn't trial counsel. I am giving him more leeway than if trial counsel was doing it.

Have you seen the grand jury notes?

MR. DERSHOWITZ: I have not.

THE COURT: Then pursue the question.

MR. DERSHOWITZ: But it was an intermediate question to the next step.

Q Will you answer that question?

A I don't recall it.

Q You don't recall whether he asked you that?

A No.

Q Do you recall whether prior to your going in front of the grand jury in preparation for your grand jury testimony whether Mr. Shaw asked you about what crimes you had committed?

A Yes, I would be certain that he did. I don't remember a specific situation where we sat down, Mike Shaw

and myself, and said, "Okay, let's spell out exactly what you have done in detail," and so on. I don't remember that. But I have a feeling that he and I spoke about my prior misconduct that I admitted to him.

Q Are you sure you spoke to Mr. Shaw about your prior misconduct?

A I am not sure, no, sir.

Q But to the best of your present recollection?

A I think I probably would have, but I am not sure at all, I am really not.

Q Prior to your going into the grand jury room?

A I am sorry, really, I don't remember.

Q Do you remember discussions you may have had with Mr. Shaw in preparation for your testimony before the grand jury?

A Yes. I mean, those are the discussions which dealt basically with the instant case, your know, not with my misconduct.

Q Did you have a discussion with Mr. Shaw about the fact that you would eventually have to testify before a petit jury as well?

THE COURT: At that time?

Q At that time.

A Not that I recall, no, sir.

Q In your discussions with Mr. Shaw preparatory to the grand jury appearance, did you mention to him the $200 incident, the sharing of $200?

A I may have. I may have. I don't remember doing it. I don't remember any specific situation where it came up, but I may have talked about that in the sense of talking about one of the agents that were involved of being in a sensitive position at that time.

Q Do you remember whether you told him that you shared any of that money?

A No, sir.

Q You do not remember whether you told him that or do you remember that you did not tell him that?

A I don't remember whether I did or didn't tell him that. It seems to me that I probably did tell him that.

Q You probably did tell him that?

A Yes.

Q Did he ask you about it?

A Not that I recall, no, sir.

Q You volunteered it?

A Yes.

Q Can you give us an approximate time frame as to when you might have told him about that?

A I couldn't. I really couldn't.

Q Would it be in February, would it be a year later?

A I would say it probably would be between the beginning of March and all during 1971, during the time that I was spending a lot of time -- many, many hours with him during the investigation.

Q When did you testify in front of the grand jury in the Rosner case?

A You would have to tell me. I don't know the date.

Q Would it be approximately June of 1972? Would that refresh your recollection?

A Well, you know, I don't know. I assume --

MR. SAGOR: I think that is correct, your Honor.

THE COURT: Why don't you get the grand jury minutes and confront him with it? The defense has it as well as the government.

MR. DERSHOWITZ: What we are most actually --

THE COURT: What is the date on which that man testified?

MR. SAGOR: I believe it would be late June, early July. And I believe the assistant also in the grand jury is myself, so he may want to ask questions about that as well.

THE COURT: Did you hear that?

MR. DERSHOWITZ: Yes.

THE COURT: Late June and early July and Mr. Sagor was in the grand jury.

MR. SAGOR: As well as Mr. Shaw.

Q Mr. Shaw was in the jury room?

THE COURT: Mr. Sagor --

MR. SAGOR: And I asked Detective Leuci the questions in the grand jury.

MR. DERSHOWITZ: While we are getting representations, perhaps we can get a representation whether or not Mr. Sagor recalls whether the questions about his clients came up in the grand jury room.

MR. SAGOR: The answer is no, your Honor, there were no questions asked about Detective Leuci's prior misconduct.

Q Did you speak to Mr. Sagor prior to your appearance at the grand jury in June of 1972?

A Yes.

Q And did Mr. Sagor at any point ask you any questions relating to your criminal activity?

A I don't think so. I don't remember.

Q Did Mr. Sagor and Mr. Shaw,were they in the same room preparing you, asking you questions in preparation for your grand jury testimony?

A I was prepared, I think, for the grand jury

testimony to the best of my recollection basically by Mr. Sagor.

Mr. Shaw came into the grand jury --

Q I am talking now about before, prepared for the grand jury, I am talking about conferences you may have had before you actually went into the grand jury.

A Well, it was basically with Mr Sagor.

Q Was there any discussion with Mr. Shaw in preparation for the grand jury?

A In preparation of the grand jury? There was a lot of conversation with Mr. Shaw. Mr. Shaw is a good friend of mine and I spent a lot of time with him.

Q You told me when we talked last week that you had a very hard decision to make as to whether or not you were going to publicly reveal the crimes that you admitted to Mr. Sagor at Mr. Rosner's trial.

A That's true.

Q That is true? And you also told me that up to the very eve of Mr. Rosner's trial you seriously considered not publicly disclosing those four incidents, is that true?

MR. SAGOR: Your Honor, I object to the form of the question, what Mr. Leuci told Mr. Dershowitz. Can we have his testimony on that score as opposed to a prior statement Mr. Dershowitz says? If Mr. Dershowitz thinks anything is

inconsistent about it, can we have him --

THE COURT: Overruled. This is not a jury case in which a jury is going to determine, it is a matter that I shall determine and I have no reason to believe that Mr. Dershowitz is not stating the facts in his question. Overruled.

It is better form, however, to do that.

Go ahead.

A Can you ask me that again?

Q Yes.

You did tell me, did you not, that up to the very last minute you were seriously considering not publicly revealing your criminality because you wanted to protect certain other people?

A I was seriously considering it for a short period of time.

It was, again, a very strange time on me. It was a time I was going to become public, it was a time I was going to admit to committing crimes and I seriously considered saying I hadn't done anything.

I made my feelings known and --

Q To whom?

A I made my feelings known I think at the time to Mr. Sagor. At some point in time Mike Shaw arrived at the

courthouse and he and I had a conversation about that.

Q And what did Mr. Shaw tell you at that time?

A Mr. Shaw tried to impress upon me, you know, how important it was what I had done and also tried to impress upon me how important it was for me to be 100 percent truthful, whether or not -- no matter what the outcome of the Rosner case was, but that what was more pertinent to him and I as friends was that he would put me -- I would force him into a position where he would testify against me, that, in fact, he knew that I had committed misconduct or criminal acts and that I had talked to him about that and that if I ever tried to take the stand and take that kind of a stance that he would -- I would not only lose him as a friend but I would also find myself in a position where he would prosecute me.

Q Prosecute you for what?

A Perjury.

Q You were told if you did not testify truthfully as the Rosner trial that you would be prosecuted for perjury?

A I was told that by Mike Shaw, that I stand a very good chance if I take the stand in the Rosner trial and say that I have never done anything wrong and lie that I would not only lose him as a friend but he himself would prosecute me for perjury.

Q Did you believe that?

A I didn't believe that he would prosecute me for perjury.

Q You do not believe that he would prosecute you for perjury?

A If you ask me what I believed at the time, I believe I would lose him as a friend, but I didn't believe that he would prosecute me for perjury.

Q But he did tell you that he would prosecute you for perjury if you lied about your criminal record in your testimony at the Rosner trial?

THE COURT: Not his criminal record. He has no criminal record.

MR. DERSHOWITZ: Criminal activities?

A Yes.

Q But you didn't believe that?

A Well, you know, it's hard to say. I think at the time when he was telling me that, whether I believed it or not, I sort of believed it and then I sort of not believed it. I couldn't see Mike Shaw prosecuting me, but it was -- like I say again, it was an emotional time.

I don't know if I really seriously considered not disclosing the things that I had already disclosed, but I felt, you know, it was like the last moment and I was going

to expose myself to this kind of publicity, I was going to expose my family to this kind of thing, and I thought what I had done I shouldn't have to be asked to do that and I said I wasn't going to do it, really. That's really what happened.

Q When did you tell Mr. Shaw you weren't going to do it?

A I would say it was like 1 day or so before the trial.

Q All right. One day or so before the trial you told Mr. Shaw that you were seriously considering not disclosing your criminal record in the Rosner case?

THE COURT: When he says record he means activity.

MR. DERSHOWITZ: I am sorry, I can't get that out of my mind.

THE COURT: Criminal record are words of art in these cases, as you may know, Professor, and they are different from criminal activity.

MR. DERSHOWITZ: I do.

THE COURT: Just a moment, please, now while I make some notes here.

(Pause.)

THE COURT: All right, go ahead.

Q The question was, up until one or two days before

the trial, were you actually telling Mr. Shaw that you were seriously considering not testifying or testifying that you had no criminal activities when you testified at the Rosner trial?

A I told that to Mr. Shaw. I told that to him. And I think, you know, again, as a gut reaction, at the time, you know, I seriously thought about it but, you know, it didn't last long, counselor.

Q What precisely did Mr. Shaw tell you a day or two before the trial when you said you were considering not revealing your criminal activities at the Rosner trial?

A He told me that he had formulated over a period of time a feeling, a very strong feeling about corruption in general and that he had formulated a very strong feeling about organized crime people in general and about policemen in general, and he said that I had done a great deal as far as he was concerned personally to change a lot of his opinions and he said he would be completely disappointed and destroyed as far as my own personal relationship with him was concerned if I took the stand, said I would go into the Rosner trial and lie about my misconduct and that he would find it so objectionable that he would prosecute me.

Q Did you ever consider the possibility you might testify at the Rosner trial and that Shaw wouldn't find out

about it?

A No, sir.

Q You knew obviously Shaw would find out what you testified about at the Rosner trial?

A Yes.

Q Did Mr. Shaw ever suggest to you that you might, at the Rosner trial, when asked about your criminal activities plead the Fifth Amendment?

A No, sir.

Q Did you ever consider the possibility of pleading the Fifth Amendment when you were asked about your criminal activities?

A I wish I had. No, sir.

Q You wish you had?

A I wish I had thought about it.

Q There was no discussion with any government official about the possibility of pleading the Fifth?

A No, sir. No, sir.

Q Had you consulted an attorney at that point?

A No, sir.

Q Never occurred to you that you could plead the Fifth?

A I didn't think I could.

Q Did you ever suggest to Mr. Shaw that maybe they

shouldn't ask you questions about your criminal activities?

A No.

Q This was a very important issue to you, was it not, your exposure of your criminal activities at the Rosner trial? This was prying on your mind right to the eve of the trial.

A Very important -- I am sorry, sir --

Q This was an issue that was prying on your mind that was very important to you, how you could possibly testify at the Rosner trial and not reveal your criminal activities, isn't that true?

A It was a very important issue that was prying on my mind, that's very true, yes. Okay, yes, that's true.

Q And yet there was no discussion with anybody in the government as to ways that you might be able to testify without revealing this criminal activity?

A None whatsoever.

Q You were told that if you testified at the trial, you would have to reveal your criminal activities?

A Yes.

Q You knew that you would lose Shaw as a friend if you testified falsely at the Rosner trial, is that correct? You believed that?

A Yes.

Q Why, then, did you testify falsely at the Rosner trial about your criminal activities?

A That is a very difficult question. I think, you know, it has many answers.

One of the main -- well, start from the top and work down.

I think basically I felt, number one, I wasn't under indictment, I wasn't threatened with indictment, I had volunteered to come in and do this kind of work; that as far as the defendant Rosner was concerned I was telling him and I was telling the jury that I was a corrupt policeman, that he is not facing a guy who is sitting here saying "I have never done anything wrong, I was an undercover agent and I caught him," I was telling them that I was corrupt and I was involved three times, four times.

My family had to see that. My family never thought of me -- all my family ever thought of me as being was a policeman. They were going to read about that. It was going to get a lot of play in the papers. If I was going to go -- and I think probably equally as important maybe more important I was prepared to talk about myself if it came to it that I had to do that I was prepared to talk about people that I thought could not be prosecuted within the province of an informant type situation, something similar to what Bill

Phillips had done, and that was completely distasteful to me, and it was impossible for me to handle. I would never do that, to be able to get on the stand and testify against my brother officers that I had slept with and ate with and were less culpable in some situations and more culpable in other situations but nevertheless were close personal friends over the period of seven or eight years and I chose these situations and these are the situations I described.

When it came right down to it, I thought that possibly at the last minute I could hang on and say, "Hey, you know, you guys never caught me doing anything and I am not going to say I did anything," but I decided against that.

Q You decided against it for the variety of reasons you mention, you didn't want to lose Shaw's friendship and --

A Basically, I didn't want to destroy my credibility with Mike Shaw, Mr. Seymour, with the Southern District of New York.

Q But you knew at the time that you had committed -- well, we will get into the numbers later -- in excess of 300 additional crimes? You knew that at the time. Weren't you worried that some of that might come out later?

MR. SAGOR: Your Honor, just as to the form of the question, it assumes a lot. Can he break it down as to what Mr. Leuci was thinking?

THE COURT: Yes. Sustained. Sustained.

Q You knew at the time that you made this decision to testify as to these four incidents that you had committed many, many more incidents of crimes, is that correct?

A Yes.

Q Were you not concerned that those incidents might someday come to light?

A Not really, no, sir.

Q Why not?

A For any number of reasons. I think basically the first reason is that the crimes were such that dealt with people that I had worked with and other detectives and were basically the one on one situations, and certainly, after doing what I had done, I was going to be accused of many, many things.

Second of all, when you say three hundred crimes, you know, a vast majority of those things had to do with giving narcotics to junky informants or heroin addict informants in the street, and, you know, you can get -- they will line up outside the courtroom at $5 a head. You can bring them in 600 at a time, they can all say those kind of things, and I didn't think their credibility was going to be worth anything.

I felt basically I could get through with it, and,

you know, that I had done enough and that I wasn't afraid that whatever else was going to come out that I couldn't handle.

Q In otherwords, you thought you could handle basically one on one situations?

A No, not only one on one situations, I thought basically I could handle the things that I had done, the things that I knew that I had done. Things that I had to be concerned about were really situations involving myself and other detectives and really what it would have been would have been detectives implicating themselves in situations and more than likely they would be one on one situations.

Q So your basic guideline, as I understand it, is if you could get away with it, if you thought you could handle it, you would not reveal it at trial, but if you thought it might be disclosed then you would testify?

A No, I don't liked the way you phrased that. That's not true.

Q You phrase it for us.

A Ask me the question again.

Q Let me put the question this way --

THE COURT: He has already said what his motivation was on two or three occasions. I don't want to limit you, but enough is enough, actually.

MR. DERSHOWITZ: Fine, then we won't pursue that line at this point.

Q After the Rosner trial, you had testified at the Rosner trial, Rosner was convicted, you recall the time sequence.

A Okay.

Q Then about December or January of that year, of 1972-1973, did there come a time when members of the United States Attorney's office confronted you with accusations made against you by one Richard Lawrence, known to you as the Baron?

A Yes.

Q Could you tell us precisely when those accusations were brought to your attention?

A I cannot tell you precisely the date. I can tell you I received a telephone call to report forthwith to Mr. Morvillo's office at the courthouse, the Southern District.

When I arrived at the courthouse Bob Morvillo and myself had been on a fairly friendly relationship and he walked past me without saying good morning and I assumed something was happening.

I waited outside his office and then he called me in and said to me something to the effect that he has had a very trying time the last several days and he asked me to

read some allegations. I am not sure whether he asked me to read some allegations or showed me the results of some sort of test.

Q A polygraph test?

A Yes.

And he said, "Had this test turned out other than it did, I am going to tell you, you had a real serious problem."

I said, "Well, what's this all about?"

And he told me there is a guy, Richard Lawrence, who has come in, and the way he explained it to me was that, "He is trying to shake us down. He asked us for $5,000 and if we would pay him the $5,000 he would tell stories about Detective Leuci," and Morvillo told me that he told Lawrence that if Lawrence passed a lie detector test he would pay him the $5,000, and then he said he asked Lawrence what the allegations were, he got the allegations from Lawrence and then he sent him on his way to take the test and then from those allegations he asked me several questions about the allegations themselves.

So that was the first time I hear the Lawrence allegations.

Q So in other words, you first heard of the Lawren allegations after the results of Lawrence's polygraph test

were revealed by Mr. Morvillo?

A Yes, sir.

2]4 THE COURT: And after the jury found him guilty, rather?

THE WITNESS: Yes, sir.

MR. DERSHOWITZ: We will stipulate it was well after. A month after the conviction or thereabouts.

THE COURT: Had I sentenced Mr. Rosner by then?

MR. DERSHOWITZ: No. Sentencing had been deferred.

THE COURT: Between the verdict and the sentence?

MR. DERSHOWITZ: And prior to the new first trial motion when Mr. Leuci's credibility was challenged. That will be specified later.

Q Mr. Morvillo told you that if the lie detector test had turned out differently you would have had a problem?

A Yes.

Q What kind of problem would you have? Did he describe that to you?

A No. Bob Morvillo, far different than you, Mr. Dershowitz, didn't sit down and try to explain things to me in a quiet sort of way and tried to get the facts out, he kind of jumped up and down, quite agitated, and that's pretty much -- I mean, we had a short conversation. I mean, he talked to me in a way that he would talk to someone that he

was quite annoyed at and I guess I had put him through a couple of sleepless nights.

I didn't know what was going on, and he told me that these allegations had come in, they had been investigated and one of the allegations in particular had been substantiated and that really upset him, having to do with an automobile, and he wanted to know the facts, and I told him the facts, the best I could.

Q I don't want to be indelicate, but it is an important matter and I would like you to tell me exactly what Mr. Morvillo's language to you was. If it was street language, we will just have to listen to that.

What did he tell you exactly when he was jumping up and down and was agitated?

THE COURT: You don't want the expletives deleted?

MR. DERSHOWITZ: No, your Honor.

MR. SAGOR: Your Honor,knowing Mr. Morvillo and what --

THE COURT: I was just thinking, I wasn't going to say it. Anybody who is familiar with this building can almost take judicial notice of what Mr. Morvillo would have been like, but I will permit you to go ahead.

MR. SAGOR: I think words to the effect will do

it without getting into the exact language, your Honor.

THE COURT: Overruled. He has a right to it.

A The ladies will excuse me.

He said, "If this fucken guy is telling the truth here, I am going to have your F and ass. And I wasn't so sure he wasn't telling me the truth until we gave him the test. I feel much better now about it, but there are several things in here I want you to explain to me and unless you give me satisfactory explanations for it, I'm not going to be happy with you."

Q "I'm not going to be happy with you," is that the way he put it?

THE COURT: That's what he said.

A And I took that "I'm not going to be happy with you" a lot stronger than "I'm not going to be happy with you."

Q What did you take it as? What did you think would happen to you if it turned out --

A I am not sure, Mr. Dershowitz, but I'll tell you this, I'm -- I don't know. I don't know.

Q Did he ever make the following statement to you, in substance, "If what the Baron is saying is true, a lot of cases are going to go out the window."

A No, sir.

Q Anything like that?

A No, sir.

Q In substance?

A No, sir. I think what he was saying is if what the Baron is saying is true, you are going to go out the window.

Q What do you mean by that?

A Me.

Q You would be prosecuted?

A What I'm trying to say, he didn't use those words, about what he was saying is he was really attacking me or talking to me, really, and not so much about the cases. He wasn't talking anything about the cases, what he was saying was, "If what the Baron is saying is true you are going to become my target and not my friend."

Q You say he was very agitated. Was he agitated, to your knowledge, because he was concerned for your welfare or did he express agitation that he was concerned for cases pending?

MR. SAGOR: Objection, your Honor,

THE COURT: Sustained.

Q Did he ever explain to you the reason for his agitation?

THE COURT: Putting it in simpler words, did he tell you why he was mad?

THE WITNESS: Yes. He told me, you know, that this kind of stuff can be expected after a trial and during a trial and he said when the allegations came in he found one of them to be able to be substantiated having to do with an automobile and he said that really, really agitated him, really got him mad, and had the Baron passed that lie detector test that he would have, you know, come after me, you know, fangs out.

Q Did he tell you at that time that there was a new trial motion pending in the Rosner case which was scheduled for hearing approximately a week or two later?

A No, sir.

Q Did you know that there was a new trial motion pending in the Rosner case?

A Not that I recall, no.

Q Had you not been told that Mr. Cardi would be testifying as to extensive criminal involvement by you in about a week or ten days?

A After the trial?

Q After the trial.

A No.

Q In January?

A It was my understanding that Cardi had testified during the trial.

Q Were you aware in Janaury 1972 there was a proceeding in this courthouse in front of Judge Bauman in which Cardi, Diaz and Cataldo testified under oath that they were involved in drug transactions with you?

A Okay. No, I thought that happened -- yes, I was aware of that, but I had mixed it up, I thought it was during the trial itself.

Q Get back in your mind to January of 1973. The trial is over.

A Okay.

Q The Baron, Lawrence's allegations have been brought to your attention.

Do you recall at the time that the Baron's allegations were brought to your attention that you knew there was going to be or there were going to be three witnesses, three new witnesses who were going to be, again, questioning your credibility?

MR. SAGOR: Objection. How could he possibly know who Mr. Krieger was going to call at a hearing before your Honor, whether there is going to be a hearing, what was going to occur?

THE COURT: Overruled.

You may answer.

A I guess I knew, but I don't know why I place it

in my head as having taken place during the trial.

Q Let me put the question a little bit differently.

In January 1973, did any member of the United States Attorney's office call you in and say, "Okay, let's go over Cardi, Diaz and Cataldo again. They are coming in, they are going to testify or they have testified against you. Here is what they said. Are they telling the truth."

Did that occur in January of 1973?

A Yes, I think that also occurred, your Honor, during the trial, that I assumed these guys were coming in during the trial and I spent sometime with Mr. Sagor and we discussed Mr. Cardi and Mr. Cataldo and Mr. Diaz and Mr. Jacobs and any number of others.

Q Did Mr. Morvillo tell you when this discussion occurred about Richard Lawrence, did he tell you that this information would be made public?

A What information?

Q The information that Richard Lawrence had provided Mr. Morvillo which had so much agitated him.

A No, sir.

Q Did he tell you it would remain private?

A No.

Q Did you at that time know whether or not that information was going to be put in the newspapers, was going

to be the subject of an open proceeding?

A No, sir, absolutely not.

Q You had no idea? You must have been quite worried about it.

A You are talking about 1972?

Q December 1972, January 1973 we are talking about, after the trial, the Baron comes in and makes serious allegations.

A Yes.

No, I had no idea that would be in the papers.

Q Did you worry about it at that point?

A Did I worry about it? No.

Q Why didn't you worry about it?

A I wasn't worried at all about the Baron's allegations.

Q Did there come a time when you were again confronted with the allegations made by the Baron approximately a year and two months later, in March of 1974?

A Yes.

Q Can you describe the circumstances under which you were told about the Baron's allegations in March of 1974?

THE COURT: Just a minute, before you get to that.

When you were talking to Mr. Morvillo in December 1972 or January of 1973, did Mr. Morvillo take up with you

these allegations one by one? Did he go over them with you and did he ask you about them?

THE WITNESS: Yes, sir.

2-5 THE COURT: And without going into what the allegations were, did you admit that, in fact, some of these allegations were true?

For instance, let us take the car, did you admit about the car to Mr. Morvillo at that time?

THE WITNESS: Yes.

THE COURT: What else, if anything, did you admit to Mr. Morvillo at that time?

THE WITNESS: That's all I admitted to Mr. Morvillo at that time.

I told him that the allegation that --part of the allegation that the Baron had given me three cars were, in fact, false but, in fact, that I had gotten three cars from the Baron but that I had paid for the three cars.

THE COURT: Were there any other allegations that you either agreed with or agreed in substance with in your conversations with Mr. Morvillo on that occasion?

THE WITNESS: No, sir.

THE COURT: Go ahead, Professor.

Q Skipping to March of 1974, would you tell us the circumstances under which you were again confronted with

accusations made by the Baron?

A Okay. The only problem I have with putting these things in time span and the conversations is that there were so many, you know, briefs, as we spoke about the last time when I spoke to you, that there were so many briefs coming in all the time that this was just another one as far as I knew, you know.

Mr. Sagor called me into his office, as I remember it, and asked me to read this affidavit, and it was quite an affidavit, from the Baron, from the Baron's wife, from the Baron's girl friend, from some other people, and I read through it and I gave it back to Elliot and I said, "Good luck. It's a lot of work. It's all a bunch of nonsense."

Q You unequivocally denied every allegation of misconduct contained in the Baron's affidavit as recently as March of 1974?

A That's right.

Q You mentioned that was just one of a series of things. Let us try to get that straight.

Let us try to figure out what happened between January of 1973 and March of 1974.

At anytime during that hiatus, were you again confronted with charges that people had made against your credibility?

A It seemed to me that, you know, once or twice a week, it seemed to be that often, that a brief -- I am not sure if I am using the right words, but something would come in with an allegation made against me by someone and the attorney of record being you or Nancy Rosner and they ran the gauntlet to Mai-Lai to the bombing of Hiroshima.

Q I take it that is metaphorically?

A Yes, yes.

Q There were no references to Mai-Lai or the bombing of Hiroshima.

A As I said, there were constantly things coming in and I would read them and I denied them as they came in and as I was asked about them.

Q Though you say they referred to Mai-Lai and Hiroshima --

A No, I am sorry.

THE COURT: That was using a figure of speech.

Q I understand that, but I want to make something clear. At least some of the allegations that were coming in, as we will develop later on, were true.

A That's right.

Q And you denied them?

A Yes.

Q Would you describe an incident or will you tell

us when the incident occurred when Mr. Sagor brought your attention to the so-called Goe memorandum?

A Mr. Sagor at that time was preparing to answer your brief, I guess. He was doing a lot of work, as you usual, and spending a lot of late hours, as I remember it, and I was outside his office. He called to me and again in his own inimitable way --

MR. SAGOR: Could we have the substance? I know you did it with respect to Mr. Morvillo, but --

THE COURT: He did describe your way as inimitable and I will permit that to stand.

MR. SAGOR: Can we let it go at that?

THE COURT: Yes.

A He said, again, you will have to excuse me, I will give you as I remember it word for word, he said --

MR. SAGOR: That is what I object to. I don't know if Professor Dershowitz is asking for it word for word.

MR. DERSHOWITZ: I am. I am sorry, Mr. Sagor, but I have to.

A He said, "What blank idiotknew about this and where has it been?"

It is a four letter word starting with F and he said, "What idiot knew about this thing and where has it been?"

Q Did he seem agitated as well?

A I would say he was up to the third story by that time. And he said to me, he asked me is it true.

Q What did you say?

A I think, to the best of my recollection, I said to him something like, "Elliot, it happened, but I forgot it," and he continued going up.

Q Continued getting more and more agitated?

This was prior to the time that Mr. Sagor responded to our new trial motion? He was preparing to respond, to your recollection?

MR. SAGOR: I am going to object, your Honor, unless we know precisely what the dates are.

I object unless we fix the time and if Detective Leuci knows the answer --

THE COURT: When did this conversation with Mr. Sagor take place?

THE WITNESS: I had --

THE COURT: To the best of your recollection? That would have to have been this year, obviously?

THE WITNESS: Yes, it happened this year within the last couple of months. I don't remember exactly which date. We had several conversations about the Goe memorandum.

That is what you are talking about.

THE COURT: Do you remember the month?

THE WITNESS: It's only six weeks or so, you know, six or seven weeks ago.

THE COURT: All right.

Q But to the best of your recollection, it was while he was preparing to answer our new trial affidavit? You so testified, did you not?

MR. SAGOR: I am going to object, your Honor. He said there were several conversations here. Unless he is saying this occurred in the first or same conversation, I have no objection. I don't think it is clear when he said.

THE COURT: Wait just a minute. Do you know of your own knowledge, Mr. Leuci, whether or not this conversation that you have just repeated, namely, "What idiot knows about it and where has it been," do you know of your own knowledge whether Mr. Sagor asked that at or about the time or during the time he was responding to the defendant's motion for a new trial?

THE WITNESS: Yes, to the best of my recollection it was during the time he was preparing to respond.

THE COURT: All right, go ahead.

THE WITNESS: To the best of my recollection. I may be wrong, Counselor.

Q Continue, please, to describe the conversation

after you were up to the third story and he was getting madder and madder. What happened at that point? How did the conversation continue?

A I had several conversations with Elliot about the Goe memorandum.

Now, this one that you are talking about now, I think I may have left him with it happened and I forgot it.

Q Did you tell him that in addition to having told Mr. Goe about this, that you had also told Mr. Tarteglino about it?

A No.

Q Did you tell him the details about the transaction at this point?

A No, sir.

Q What did you tell him precisely at that point about the incident?

A You know, I didn't tell him anything.

If you are talking also about a period of time when I was under a great strain and a lot of things were going on aside from that.

He showed me this memorandum, I read it, gave it back to him and he said after he made the statement about, you know, "Who knew about this and where has it been," and everything else, he said to me, "Is it true?"

And I said, to the best of my recollection, that it is true, but I forgot about it.

Q He asked you who knew about it. Did you tell him who knew about it?

A I said, "Elliot, don't ask me, ask DEA," and I walked out.

Q Ask --

A The Drug Enforcement Administration.

Q So you didn't say, you walked out? Did Mr. Sagor say, "Come back. Now tell me who knew about it"?

A I told him,like I say, to the best of my recollection, "Get in touch with DEA people. I don't know who knew about it. Goe knew about it because he signed the memo." I said, "I don't know who else knew about it and I don't know where its been, but I quite frankly forgot about it and I'm going home, Elliot, you know, it's like 11:30. You are just sitting down for the night, but I'm going home," and I left.

2-6 Q He didn't pursue you and ask you whether other people knew about it? Did he ask you whether anybody in the U. S. Attorney's office knew about it?

A I think we spoke that again at another time when he asked me, "Did anyone at this office know about it?"

He said, specifically, the same question you

asked me, "Did Mike Shaw know about it?"

Q What was your answer to the question did Mike Shaw know about it?

A I said no, I really didn't think he did. I said it was possible he may have, but I didn't think he did. I am positive no one here knew about it.

Q You are positive that no one else here knew about it?

A That's right.

Q How could you possibly be positive?

A Because no one had ever asked me about it.

Q So you are positive that no one had ever asked you about it?

A Right.

Q But it is surely possible that someone knew about it, that is, that the Goe memorandum had been shown to somebody else or that the revolation had been shown to someone else? It is possible that someone else knew about it?

MR. SAGOR: Objection, your Honor, that is not a question.

THE COURT: Anything is possible. Sustained.

Q Did you tell Mr. Sagor at this point that you had told it to a BNDD official in Shaw's apartment?

MR. SAGOR: Your Honor, can we have the time at

which conversation with Mr. Sagor?

MR. DERSHOWITZ: He is talking about the first conversation.

THE COURT: He told you about the first conversation, I think.

Did that occur in the first conversation?

THE WITNESS: I don't think so.

Q You said in the first conversation that you left by saying, "Speak to the people at the Drug Enforcement"?

A Right.

Q Did you also tell him that you had spoken to people at -- I take it Drug Enforcement is simply the successor to BNDD?

A That's right.

Q So you did tell him that you had spoken to people at BNDD at that first meeting?

A Yes, I believe so.

Q Did he ask you where that conversation occurred?

A No.

Q Did you tell him that it occurred in Shaw's apartment?

A I don't think so.

MR. SAGOR: Which conversation, your Honor.

MR. DERSHOWITZ: First conversation is what I am

asking him about?

MR. SAGOR: With me, with Mr. Shaw, with BNDD? I don't understand Mr. Dershowitz' questions.

THE COURT: Well, I do. Go ahead.

If you have any trouble understanding the questions, you tell me.

THE WITNESS: Okay. I understand.

A The first conversation didn't have to do with where I had made this revelation or where I had made this comment about the two people from BNDD. I am talking about my conversation with Elliot.

The conversation was where has it been, is it true, the answer I forgot it and I don't know where it's been and I'm leaving.

I seen him again a day or so later and we talked about -- or a couple of days later, "Who did you have this conversation with? Who knew about this?"

And I told him it was at Mike Shaw's apartment and had this conversation with Danny Tarteglino, you know, like that.

Q So a day or two after your first conversation you told Mr. Sagor you had a conversation with Tarteglino at Shaw's apartment?

A Okay, a day or two, you know, it could have been

several more days. It could have been five or six days later.

Q Give us the range of possibilities.

A Okay. From two days to six, seven days.

Q This is after only several months ago we are talking about.

A We are only talking, you know.

Q And anywhere from two days to seven or eight days?

A Yes.

Q That you told him that you had a conversation with Torteglino in Shaw's apartment?

A Yes. I'm not sure if I told him about the conversation with Torteglino. I told him about the conversation I had with Goe and that I assumed that Goe had gotten from Torteglino and that I had also spoken to Goe about it at one point in time.

Q You had spoken to Torteglino before you spoke to Goe?

A Right.

Q This was originally a federal inquiry?

A Yes.

Q This next time that you saw Mr. Sagor, was he still agitated about this incident?

A No.

Q So he was only agitated the first time?

A Yes.

Q Were there any threats, like the Morvillo threats? Did he say to you he would get your ass or anything?

A No, no. I think his concern was -- I can't think of -- you know, I think he had satisfied himself that no one in the office had known about that memorandum.

Q And that seemed to satisfy him?

A Yes.

Q Did he indicate whether or not he was going to turn that material over to the defendant?

A He didn't indicate that to me, you know.

MR. SAGOR: Your Honor, could the record reflect that the government sua sponte in this case turned it over to the court and I also -- well, I would like to, at a convenient break, alert Dershowitz as to something or I can do it now if he wants to.

THE COURT: Say whatever you want to say.

MR. SAGOR: Not while the witness is on the stand.

THE COURT: At the luncheon recess, which will be in 15 minutes.

MR. DERSHOWITZ: May the record also reflect that when Mr. Sagor answered our new trial motions in an affidavit under oath he did not reveal the existence of the Goe memorandum.

MR. SAGOR: There are reasons for that, your Honor. The government sua sponte told Mr. Dershowitz on the record. I assume his is going to call me as a witness. I will be glad to explain it to him.

MR. DERSHOWITZ: I just want the record to be complete on that matter.

THE COURT: Yes. I think the record ought to be clear that the government did make available to you an opportunity to interview Detective Leuci.

MR. DERSHOWITZ: By all means, and we took that opportunity and we are grateful for it.

Q There came a time shortly after the time we are talking about now when you began to reveal to the government that you had lied at the Rosner hearing, at the Rosner trial and that you, in fact, were involved in more extensive criminal activity than you had admitted to, is that true?

A Yes, sir.

Q Will you tell us the date on which that occurred?

A April 17, I guess, is the date that I first sat down and started outlining the types of things that I had been involved with in excess of the things that I had admitted to at the Rosner trial.

THE COURT: To whom did you do that?

THE WITNESS: To Mr. Giuliani and Mr. Puccio from

the Eastern District and Mr. Jaffe.

Q This was after you had been confronted with the Baron's extensive affidavit and with the affidavit of his wife and various others.

A No, absolutely not, counselor. I mean, I had been confronted --

Q Was that not after that?

THE COURT: Wait a minute. He is correcting himself.

Go ahead.

A Yes, I had been confronted with that, but I had already answered that to the government as far as I was concerned the entire affidavit was false, except for something about the cars, but the entire affidavit was false.

Q That is what you told them?

A That is what I told them. And now I am at April 17 and it is an entirely different set of circumstances arises and all during the period of time, and I am at a point where I am talking to Mr. Giuliani and Mr. Jaffe and Mr. Puccio from the Eastern District and I am telling them that there are more extensive activity on my part than I had described at the Rosner trial.

Q Do I understand that the reasons that you began to talk to Mr. Giuliani, Mr. Puccio and Mr. Jaffe did not

relate to the new trial motion but related to other circumstances?

A Absolutely.

Q There was no relationship between the filing of the new trial motions and the affidavits and your decision to reveal your past criminality?

A Well, you know, to be a hundred percent honest with you --

Q You should be honest with me throughout this proceeding.

A I really am. And that also, too, of course. It disturbed me, b u t it certainly wasn't the motivating factor to my coming in and speaking to Mr.Giuliani and Mr. Jaffe and Mr. Puccio. I felt very easily I could handle the Baron's allegation. I wasn't concerned about those allegations.

Q You felt you could handle the Baron's allegations?

A That's right.

Q Even though you knew at the time that at least some of them were true?

A Yes.

Q You felt you could handle the Baron, why?

A Because they were false.

Q No, no. As to the true allegations, why did you feel you could handle the Baron?

THE COURT: Before you get into that, what was trucin the Baron's allegations?

MR. DERSHOWITZ: Can we develop that in our own order?

THE COURT: No, it is not orderly and I can't follow your question until I know what was true in the Baron's allegations.

A The backbone of the Baron's allegation -- if I got them backwards you will tell me -- the backbone of the allegation is that I was involved in a conspiracy to sell narcotics with him to a third party by the name of John that I knew to be completely unequivocally false. Okay?

He also made allegations that I had taken money

from him or that he had given me money over an extended period of time at various times. That was true.

There was also a part in the thing that I had given him narcotics on many, many occasions. In fact, I had given him narcotic on one occasion and that I had been present when narcotics was given to him over my objections on another occasion.

But the crux of the whole affidavit is this crazy impossible kind of story of me being involved as the French connection guy and involved in a big narcotics conspiracy with the Baron and his wife and his girlf friend and his brother-in-law and about two or three other people from Brooklyn, so basically as far as I was concerned that affidavit as strongly as you may feel that, you know, really motivated me I could have easily handled. I felt at the time that it was nonsense and it wasn't true and I could probably prove that it wasn't true.

THE COURT: Do I understand you as you have suggested before with relation to the cars that you did, in fact, have some transactions about cars, but that you paid for them?

THE WITNESS: Yes, yes.

THE COURT: Is that what you said?

THE WITNESS: Yes, yes.

THE COURT: All right, go ahead.

MR. DERSHOWITZ: We will get to that in a minute. We will bring out the fact that he paid for them in substances other than money.

THE COURT: All right.

MR. DERSHOWTZ: Okay.

Q So just to reiterate this part ofthe testimony, you knew that the Baron had accused you of giving money to you, of taking money from you and of receiving from you narcotics? You knew that those three allegations were contained in this rather extensive affidavit, is that right?

A Those three allegations were contained in his affidavit, but in an entirely different way than you are putting them now.

Q But there were allegations, were there not, that on several occasions you gave him heroin?

A That's right.

Q YOu knew at the time that you were confronted with those allegations that on one occasion you had, in fact, given him heroin?

A Yes.

Q You also knew at the time you read those allegations that you had, in fact, paid him money?

A Yes.

Q You also knew at the time of those allegations that you had, in fact, received money from him?

A Yes.

Q The Government asked you whether or not those facts were true, I take it?

A Yes.

Q And you denied them?

A That's right.

Q Knowing them to be false? Knowing them to be true, knowing Your denial to be false?

A Knowing my denial to be false.

Q You denied them because you thought you could handle the Baron even as to his true statements, I take it?

A Yes.

Q Why did you think you could handle the Baron?

A Why did I think I could handle the Baron?

Q Yes.

A I think because, you know, just basically the weight of his allegations against me was so overwhelmingly false that simply because there were one or two things in there that were true that, you know, that I could handle it, that I could show, you know, that he is a braggard and a liar and a dope pushing pimp and that nobody is going to believe him when the end comes down between him and I.

Q Even when he is telling the truth?

A Even when he is telling the truth, even though he is telling the truth, you know, a small percentage of the time.

I doubt if he knows when he is telling the truth and when he is not telling the truth.

Q So in April of 1974, for reasons which you will describe to us in a minute, you begin to tell the Government about your criminal activity?

A Yes, sir.

Q Now would you tell us what reasons motivated you to make those disclosures at this time?

A Okay. I think, again, there are many reasons.

To start with, I had completed my testimony in the Rosner case, you know, and the appeals were going on and things like that, but I had made many, many other cases and I was testifying at that time in State Court in a case involving a Detective Oakland and Gilroy and I realize during that trial and after my cross-examination, which was fairly lengthy and extensive, that I had perjured myself again and that I have a possibility of 15 or 20 more trials and that if I kept the stance, you know, I'm going to perjure myself 15 or 20 more times. Now, that had something to do with it and I thought, you know, I don't know how long I

can keep this up.

Along with that, a fellow that I had worked with and that had been in the special investigating unit of the Narcotics Division had been brought in by the Southern District of New York, I had had a conversation with him and convinced him to cooperate with the Government and one of the first people he gave up was me, but I want to explain that in the sense he didn't know anything specifically about me but what he said was that I had a reputation as being one of the major guys in narcotics as far as being involved in corrupt activity, so he had thrown more doubts on the minds of the people that have been so closely associated with me over the last three years.

Q Who was this person who described you as being one of the major guys in drug activities?

A Corrupt activities in the SIU.

Q Yes. Who was the person?

A Carl Agiuluz.

Q And when, to your knowledge, did Carl Agiuluz describe you in this way to the authorities?

A I don't know when. But what I am trying to explain to you is all the different things that worked on me that brought me to the point of April 17th when I'm discussing these things with Mr. Jaffe, Mr. Puccio and Mr.

Giuliani.

There is an extensive investigation going on by the Federal Government both in the Eastern District and the Southern District into the SIU, which was the unit I was attached to. Many people were being indicted. There are things being said about me, there is nothing concrete, there is no one saying that Leuci did this or Leuci did that, but there are a lot of things saying that Leuci did a lot more than he is saying that he did in the Rosner trial.

Q When were these things going on, do you know?

MR. SAGOR: Excuse me. Can he finish his long answer as to the reasons? I think that was the question. He is trying to answer the question.

THE COURT: Have you finished?

THE WITNESS: No, sir.

THE COURT: Go ahead, finish the answer.

Read the last part of the answer, please.

(Record read.)

A So I'm then confronted with the possibility of somewhere down the road not a month from now, not two months, maybe not a ayear, but eventually being put in a situation where there was a chance I would be indicted.

Now, I tell -- as far as I am concerned at that

time I'm still not really prepared to come forward and say that I have done all these things.

I have had a lot of conversations with people that are very close to me, and Mr. Giuliani and Mr. Jaffe came and spent some time with me at home and I discussed it with my wife to the extent they were telling me, "We don't know if you have done other things, you are telling us you didn't do other things, but for God's sake if other people do come in and tell us otherwise there is nothing we are going to be able to do to help you," and the way they described it to me was, you know, "If you have a cancer, you know, think of us as doctors and let us come in and take it out of you. If you are lying about this stuff, you know, don't stay with it."

And I said, you know, to hell with that as far as I was concerned. My family had gone through a hell of a time for the last two or three years, I had gone through a heck of a time the last two or three years. Two very good friends of mine had committed suicide during all this odyssey of madness here, I don't know what you want to call it. And the bottom line was going to be I was going to be indicted down the road for perjury.

So all of that, when I came in and I spoke to Jaffe and Puccio and Giuliani and I had the distinct

impression from those three that if something could be made against me that I would be indicted for perjury and I saw it as a real possibility if everyone in the SIU gets indicted, including the clerical man, the chauffeur and the guy that was cleaning the toilet, and that's the way it looked like it was going to happen, that I sooner or later was going to be indicted.

Q And you had the distinct impression at that point that unless you told the truth they would probably be able to get the information against you?

A No, not really. I felt, you know, they would not be able to get the information against me in all the situations, maybe there would be one situation they would have enough to bring charges against me as far as perjury in the Rosner trial is concerned. But at that time what I wanted to do was just, you know, just to get it out and get it done with.

Q Do you think at that time they may have already had enough information to bring charges against you in the Rosner trial?

A No, sir.

Q Did they tell you about any information they had against you at the point?

A They told me that there were a lot of rumblings,

but there was nothing that they had, they didn't have enough, certainly, to bring before a grand jury or anything like that.

Q But there were rumblings?

A Yes.

Q The rumblings were that you were involved in a lot more criminal activities than you had admitted to in the Rosner trial?

A Yes.

Q Could you tell me exactly how that was put to you by the Government attorneys?

MR. SACOR: May we know who and when, your Honor?

Q Let us hear it first and then we will fix the time.

A Okay.

I told, as I remember it -- I asked Mr. Rudy Giuliani, I asked, "Rudy, am I going to be indicted? What is going on here?"

And he said to me, "Bob, as it stands now, you know, there are people coming in all over the place. If you are lying to us, you are not telling us the truth, you know, people are slipping all over and if someone tells about you, if they involve you, you are going to be indicted."

Q When did this conversation occur?

MR. SAGOR: Did he finish the conversation?

THE COURT: Yes. Don't interrupt, please.

MR. DERSHOWITZ: Yes. I'm sorry.

A I told -- I asked Rudy, I said, "Does it look like a real possibility right now, next week?"

He said, "No, it doesn't. But that is not important. What is important, are you holding something back here?"

And it was put to me in that way and --

THE COURT: Just a moment now.

Go ahead, you may finish.

A And this is an ongoing conversation, Mr. Dershowitz, and it is an ongoing conversation, you know, that I had with Rudy and Joe Jaffe and Tom Puccio. I think at one time I spoke to him about that type of thing.

THE COURT: Would you pick a convenient place to stop for the luncheon recess, Professor?

MR. DERSHOWITZ: I think in about five minutes would be fine. I would just like to pursue this one line.

THE COURT: Yes, go ahead.

Q Can you remember precisely the first date, the first time, not when you admitted your criminal activities

but when you were first confronted by Mr. Giuliani or Mr. Puccio or Mr. Jaffe with these rumblings?

A No, I couldn't give it to you in the first time or anything like that.

I'm here every day and people are being -- people from my old office were being indicted every day just about, it seemed to be, and I was talking to Mr. Giuliani and Mr. Jaffe and Mr. Sagor, you know, every day, more to Mr. Giuliani and Mr. Jaffe than anyone else, and they were telling me, you know, "You know, Bob, we hear a lot from people that have come in and turned around, we hear a lot of rumblings."

Now, in time, if you want to ask me in time when that happened, I would have to say that is in the time around when the first indictments start coming down On the people in the SIU, around that time.

Q By the way, you mentioned you are here every day. How long has that practice existed?

A Well, I'm here, you know, I have been here just about every day for the last, you know, two years, other than on weekends when I go home to my family, between here and the --

MR. SAGOR: Objection. I really don't want it to come out where he goes home to.

THE COURT: I don't want it to come out, either.

MR. DERSHOWITZ: I don't want it to come out as where he is living, I want to know where he is working.

A Working with the police people at 280 Broadway and working with the Special Prosecutor's office.

Q Do you have an office in this building?

A No.

Q I just want to pursue one more line of questioning before the lunch break about time.

It is April 16th, is that right, that you first make your revelations to Mr. Jaffe?

A Yes.

Q Just try to think back --

MR. SAGOR: Excuse me, your Honor, I don't know that he said it was Mr. Jaffe, I think he said Puccio and Giuliani.

THE COURT: Just a moment. Let me see here for a moment.

(Pause.)

THE COURT: My notes indicate, Professor, that he said on April 17 he outlined his involvement to Giuliani, Puccio and Jaffe.

MR. SAGOR: I think he said at one point --

THE COURT: Is that correct?

THE WITNESS: Yes, that is correct. I think, you know, you have the 17th and then the 18th, if I'm not mistaken. I think on the 17th it is just Puccio and Giuliani and then I think on the 18th is Puccio, Jaffe and Giuliani.

Q Fine. Then about the 17th and the 18th is when you start making these revelations.

Thinking about that date, try to give me a sense of how far before that did any of these three people start telling you about the rumblings, start questioning you about your activities?

A When you are asking me to start questioning me about my activities other than the ones that I admitted to at the Rosner trial, you can go back prior to the Rosner trial when I was asked about that.

Q No, I am talking about specifically, you said there came a time when rumblings began to be brought to your attention?

A Okay. I would say around the time that Carl Agiuluz is brought to the Southern District of New York and confronted with the fact that he was going to be indicted. I speak to him that night and --

Q You speak to Carl Agiuluz?

A Yes, I speak to Carl Agiuluz and convince him that he should cooperate with the Government.

A day or so later, a few days later I have a conversation with, you know, with people in law enforcement, not necessarily anybody from this office that, you know, Carl Agiuluz is is saying, "You, too, have been involved in more than you testified to at the Rosner trial."

I say that is around the time that it really first starts, but all during this time, all during the time span from the end of the Rosner trial, prior to the Rosner trial and up until today there are allegations coming in about me, you know, all the time.

Q As far as you know, were the Agiuluz allegations about you generally correct?

A No. I mean, Agiuluz didn't make any specific allegations against me at all. What he said was he didn't know anything specifically about me but that he believed that I was lying at the Rosner trial because he believed that I was more involved in corruption within the SIU than what I had admitted to.

We will pursue this after lunch, but in general that accusation was correct, was it not?

A Yes.

MR. DERSHOWITZ: I think this would be an appropriate time for lunch.

THE COURT: All right. We will resume at 2.05 promptly, gentlemen.

MR. SAGOR: Just a point of housekeeping after the witness leaves the stand.

THE COURT: You may step down.

(Witness temporarily excused.)

MR. SAGOR: In line with what Detective Leuci has said, your Honor, there are a post-trial unsubstantiated allegations which we would like to hand up to the Court in an exercise of caution here.

I know your Honor is burdened already, but may this be marked Court's Exhibit 4.

I take it from the pace of where we are going that your Honor's doesn't need to read them at the luncheon recess.

MR. DERSHOWITZ: May it please the Court, on the characterization of caution, I think the record ought to show that these records are being handed up now only after we have the proof that the Government never handed these records to us and many of them not to the Court at the time they had the records and we couldn't prove it. I guess the Government thought they could handle us as

well.

MR. SAGOR: I think Mr. Dershowitz doesn't listen to what I say so perhaps I don't say as much as he does, but anyway this is post-trial allegations, not pre-trial, which were unsubstantiated.

THE COURT: What do you mean by that?

MR. SAGOR: That there are allegations occurring in 1973 and 1974. Any tidbits of information about Leuci which he has been questioned about which have been investigated which are unsubstantiated --

THE COURT: What do you want me to do, the same thing I did with the police file during the trial?

MR. SAGOR: I guess to view them for what I think they are worth. We think they do not add anything. Oftentimes informants are referenced and we think that kind of information is secret information where he does not have a right on any totally unsubstantiated material to route through --

THE COURT: Hand it up and I will look at it.

MR. DERSHOWITZ: I think when your Honor looks at it it ought to be re lized that most of these allegations which you have looked at over time and which the Government said were baseless have turned out to be true.

THE COURT: I don't know that to be so.

MR. SAGOR: That is not so.

MR. DERSHOWITZ: I think we can prove that at the hearing.

THE COURT: I don't know that to be so at all. I don't know the fact that every derelict narcotic seller, three of whom appeared before me in connection with the previous application of this kind and who no rational man would believe, result in having proved the allegations that they make.

MR. DERSHOWITZ: That is not my argument, your Honor. My argument is that Mr. Leuci will testify --

THE COURT: My point is this:

Allegations can be made by anybody or about anybody and there has got to be more than just somebody saying some defamatory thing.

In other words, in my view, and make the most of it if you like, it takes more than plain old defamation before I regard it as my application to make that available.

MR. DERSHOWITZ: Your Honor, our point is this, that Mr. Leuci will testify from the stand that many of the allegations contained in those files are true.

I am simply making the argument that when Your Honor reads these new submissions that he ought to bear in mind the possibility that there were previous submissions

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which Mr. Leuci said were false and the Government said were false which we will prove through Mr. Leuci's mouth are true.

THE COURT: I have in mind that what is going to happen presumably is that Mr. Leuci is going to admit that he lied substantially when he testified at the trial that he was involved in three or four instances of criminal conduct.

I expect that to happen. I don't know the extent of it, but I gather it is going to be a most substantial difference between what he actually did and what he testified to at the trial.

Once you have made that point, it seems to me, you will have proven about as much as would make any logical sense to any trier of the issues in this proceeding.

In other words, if Leuci lied about 300 things or 400 things really doesn't make a great deal of difference, does it?

MR. DERSHOWITZ: What will make a difference, though, is what the Government had in its possession at the time --

THE COURT: Well, that is what we are here for. All right, 2.10.

(Luncheon recess.)

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AFTERNOON SESSION

(2.10 p.m.)

THE COURT: I should like to repeat that any witnesses for either side will be excluded from the courtroom. If anybody is seated in the courtroom who is a prospective witness, please leave.

R O B E R T L E U C I , resumed.

DIRECT EXAMINATION (Continued)

BY MR. DERSHOWITZ:

Q Before the luncheon recess, we were talking about the period of time when you were beginning to make admissions about your more extensive criminal activities.

Did there come a time during this period when you were shown the various I.A.D. files?

A Yes, sir.

Q Could you tell us approximately when that first occurred?

A I would say the week of April the -- the 17th.

Q The week of April 17th you were shown I.A.D. files, and were you asked whether or not the allegations in these I.A.D. files were true?

A Yes. All that I did was, there were a lot of allegations, and I went through each and every allegation with Assistant United States Attorney Jaffe, but when I

said the 17th, it may have been a week later. I'm not sure.

Q Some time in April?

A Yes.

Q And did you in April admit committing any of the crimes alleged against you in the I.A.D. files?

A Yes.

Q You did admit committing some of the crimes alleged against you in the I.A.D. files during April?

A During April; yes, sir.

Q During the same period of time, did you hear a tape made of conversations between the Baron, Mr. Lawrence, and law enforcement officials?

A Not during the same period of time. I heard that tape a couple of weeks ago, maybe two weeks ago or so, maybe less, about ten days ago, I guess.

Q Could you describe the circumstances under which you heard the tape, who played it to you?

A The tape was played in Mr. Sagor's office. I played the tape. I just listened to excerpts of it. It was a long tape, having to do with many allegations that the Baron was making about other police officers, and I listened to the parts of it concerning me.

Q Were you told to keep the existence of that tape

to yourself?

A No.

Q Were you told anything about the tape?

A No.

Q Did anybody indicate to you that the tape would be turned over to defense counsel -- whether the tape would be turned over to the defense counsel?

A No, sir.

Q All right. Getting back now to the disclosures -- by the way, were you told when the tape was made?

A No.

Q Okay. Getting back to the disclosures you made to Giuliani and Mr. Cuccio and Mr. Jaffe -- and let's start talking about these disclosures in some order -- what were the first disclosures that you made to one of these Government officials? What was the nature of the disclosures, initially?

A Well, I guess the best way I can explain that is that what I said to them was that I was involved, I was a detective in the Narcotics Division for over nine years, and I was involved in all different sorts of corrupt activities within the Narcotics Division other than selling narcotics, and they ranged from giving narcotics to informants, taking money from informants, paying money to

informants, money that was taken from people that were arrested, sometimes with their knowledge, sometimes without their knowledge, money that I gave to Assistant District Attorneys, money that I gave to -- money that I received from a lawyer, a couple of lawyers -- all sorts of -- all various sorts of corrupt activities while I was a detective during the period of 1965, '66 up until 1970.

Q You also told them, I take it at that time, that you had perjured yourself at the Kosner trial?

A Yes.

Q And did you tell them that you had perjured yourself in any other proceedings?

A I told them that I had also perjured myself at the Oakland Gilroy trial.

Q Any other proceedings?

A No.

Q Had you testified at the Oakland Gilroy grand jury?

A Yes.

Q Had you perjured yourself at the grand jury?

A No.

Q Only at the trial?

A Yes.

Q You had not been asked at the Oakland Gilroy trial

about your criminal record at all?

A No --

THE COURT: It's not a criminal record.

Q I'm sorry. About your criminal activities?

A I'm fairly certain I wasn't asked that question.

Q All right. Let's talk about the category of crimes that you admitted to, which appear in the Jaffe memorandum which you have seen, under Paragraph 2.

A I haven't seen that memorandum.

MR. SAGOR: Your Honor, may we describe it for the record.

I believe we have submitted to the Court Government's Exhibit 1-A, and the Court may well wish a copy of it. I will be glad to hand one up.

PM

MR. SAGOR: I willgive also a copy to the witness, your Honor, if that is permitted.

MR. DERSHOWITZ: Turning your attention to the paragraph marked 2, you will see that it says the following:

"Leuci has admitted to and detailed for us his participation in obtaining, failing to turn in and thereafter sharing with other police officers and agents sums of money seized in connection with narcotics arrests and investigations."

A Yes.

Q Would you tell us approximately how many instances of such activity you admitted to in your interviews with the various Assistant United States Attorneys?

A I'd say between 15 and 18 situations.

Q Between which years?

A Between 1965 and -- actually I guess 1966 and [illegible].

Q What was the largest sum of money involved in any particular instance?

A The largest sum of money that I received as a share?

Q No. The largest sum of money that was illegally obtained and divided up among detectives.

gp2 Leuci-direct

MR. SAGOR: I object, your Honor. What is the relevance of that; more drama; more barbecue pits? He has admitted to a substantial -- 15 to 18, or whatever he said. Why do we have to get into what other people may have involved in?

MR. DERSHOWITZ: May it please the Court, the government has characterized the $50 instance as deminimis and trivial and has, therefore, placed in issue the amounts of money and it seems to me if the amounts of money are well in excess of that, that's a relevant situation.

THE COURT: I suggest you not be late again, Mr. Rosner.

THE DEFENDANT: Yes. I was stopped by the marshal. He wanted identification.

THE COURT: I just suggest you not be late again.

THE DEFENDANT: Yes, sir.

THE COURT: Overruled.

So far I think Professor Dershowitz has been handling this aspect with professional responsibility and sensitivity.

Overruled. Go ahead.

A The largest amount of money that I was personally associated with along with approximately nine or ten other detectives was $40,000.

gp3 Leuci-direct

Q $40,000.

And what was your share of the take of that particular seizure?

A $3500.

Q $3500.

Without getting into any details as to the 15 to 18 instances, can you tell us the usual amounts of money that wereinvolved in these seizures of money?

A I would say they ran anywhere from $2000 to $10,000.

THE COURT: Was that the total or your share?

THE WITNESS: That was the total.

Q Can you give us an estimate as to the total amount of money that was involved in these transactions?

A I don't think I could, counsellor.

Q Could you give us an estimate of what your share -- your total share of money taken in all these transactions, 15 to 18 transactions, was? How much money did you get from these transactions?

A I would say approximately $30,000.

Q Is there any more that you haven't admitted to government agents?

A Counsellor, I have admitted to government agents everything that I possibly can remember. There may be,

you know, other things that I just absolutely don't remember, small situations, whatever, but there certainly isn't one situation that I can remember other than the ones that I have talked about.

Q That was in your initial debriefing, the 17th, 18th, 19th, 20th, that first week did you admit everything?

MR. SAGOR: He didn't say that, your Honor. I withdraw the objection.

Q Let me ask you that.

When you first spoke to the government during the first week, did you admit to them all of your criminal activities?

A No.

Q When was your most recent admission?

A The most recent admission was Friday.

Q I didn't get the figure. Did you say about $30,000?

THE COURT: Let's see. My notes indicate -- correct me if I am wrong -- that you say you were involved in between 15 and 18 situations between 1966 and 1970 in which you shared illegal payoffs; right?

THE WITNESS: Yes.

THE COURT: With other police officers?

THE WITNESS: Yes.

THE COURT: With other police officers?

THE WITNESS: Yes.

THE COURT: You said the largest amount involved in any one case was $40,000, of which you got $3500?

THE WITNESS: Yes.

THE COURT: And that the amounts in the other cases ran from $2000 to $10,000; is that right?

THE WITNESS: Yes.

THE COURT: And that the total you got from all of these payoffs was $30,000?

THE WITNESS: Somewhere in the vicinity of $30,000, yes, sir.

THE COURT: All right.

Q I take it you did not report that $30,000 in your income tax returns at the end of the years?

THE COURT: That's the least of his problems, Professor Dershowitz.

MR. DERSHOWITZ: I just wanted to get even the least of his problems on the record, if we can.

A That is true.

Q Were these situations like the situation described --

THE COURT: Just a minute. You said that you told the U.S. Attorney about the last one of these last Friday?

gp6 Leuci-direct

THE WITNESS: I am not sure of the exact -- you know, the exact date, your Honor. I think it's Thursday or Friday of last week.

MR. SAGOR: I don't think that is his testimony, your Honor. I don't mean to interrupt, and I will sit down, excuse me.

THE COURT: Are there any other situations that occur to you that have occurred to you since last Thursday or Friday?

THE WITNESS: No, sir.

THE COURT: Are you holding anything back today?

THE WITNESS: No, sir.

THE COURT: That would be a pure technique, you understand?

THE WITNESS: I understand.

THE COURT: Go ahead.

Q Were these situations, described again in Paragraph 2, generally of the time that occurred in the Coe memorandum, that is, there would be an arrest or a search and you would seize money from either a narcotics dealer or an addict or somebody suspected of crimes; you would seize the money and you would instead of turning it in divide it up?

A I guess it would be characterized like that.

More times than not there were arrests where large quantities of narcotics were seized and also money was taken.

Q What did you do with the narcotics that were seized?

A Well, all the narcotics that were seized -- that I personally had any kind of involvement with was turned in, all of it.

Q You turned in all of the narcotics, but you kept a lot of the money?

A That's right.

Q Did you keep all of that money or did you give some of that money to superiors?

A Some of themoney went to superiors.

Q Is the $30,000 figure that you have given us a gross or a net figure? Is that the money you got after you made your payoffs or is that just the amount of money that was your share before making your business expense payoffs?

A Counsellor, there is no way for me to tell you exactly how much money it was.

Q Did you keep records?

A No, sir.

Q You kept no written records of the illegal money that you obtained?

A No, sir.

Q Did you keep any of the narcotics that you seized to give them to the junkies that you admit you gave narcotics to?

A Yes.

Q So you did keep some of the narcotics; you didn't turn it all in?

A That's true.

Q Could you approximate for us how much -- what quantities of drugs, in toto, you kept from these seizures?

A I would have to describe that in two separate types of situations. Situations when I was a detective working in the field unit in narcotics where we dealt almost exclusively with narcotic addicts and street level pushers, I would make an arrest and from that arrest I would take -- for example, many of the arrests we made were sale arrests. In other words, a buy was made by an undercover police officer. Some time thereafter I made the arrest of the person that made the sale of narcotics. I would arrest him for the sale. If he had several bags of heroin on him at the time of the arrest, I would take those bags and then give them to my informants in the street who were working for me at the time. I must describe those bags as $5 bags, one grain, small envelope bags,and I did that many times.

Q How many times?

A Many times, counsellor. I did that with all my informants over a period of three years every day. Everytime I met an informant I gave him -- if he asked me I gave him a bag of heroin, if I had it.

Q So you would say every day you met an informant during the period of three years you were giving drugs to him?

A I would say every day I met an informant and he asked me for drugs, if I had it, a bag, I would give it to him.

Q How often would you meet your informants during those three years?

A I would say on an average of three, four times a week.

Q So if my quick Arithmetic is correct, you are talking about perhaps 500 instances over a three-year period of turning over drugs to informants?

A Well, you know, I couldn't tell you -- you know, say 500 times, 1000 times. I had 10, 15 informants, street informants, and I wasn't giving them all drugs. There were certain informants that were working with me -- it is very difficult to explain. You know, these are very sad, you know, kind of guys. The guy who would come to me had no other way of buying drugs, and I had no money to support

him, so whatever money -- whatever I had to give him I gave him. If I had a couple of bags of heroin to give him I would give him a couple of bags of heroin. Now, to the second category, when I moved from the field group to the SIU, which worked exclusively on large scale narcotics dealers, then you moved up in the category of the type of informant you had. If you didn't have a junkie informant, then what you had was an informant who was more times than not a dope pusher himself and I never in any situation gave any of those informants heroin, with the exception of The Baron, who on one occasion I did give him some heroin, I think a little bit less than an ounce, I'm not sure how much it was, after an arrest that he had helped us with, and some time thereafter another detective gave him some other narcotics when I was present.

Q So The Baron is the only non-addict informant who you ever gave any drugs to?

A The Baron is the only non-addict informant that I ever gave any drugs to, is correct.

Q Last week when we were interviewing -- when I was interviewing you, you specifically denied having given The Baron any drugs at all; is that not true?

A Yes.

Q You lied to me a week ago?

A Yes.

Q You lied to me knowing that we were involved in what one might characterize as a quasi-formal proceeding?

A Yes.

Q You have since told the government that you lied to me about that?

A Yes.

Q Getting back to the first category, the junkie informants in your first group, would it be unreaslistic -- you used the figure 1000. Would that be an unrealistic figure?

A Yes. It is really an unrealistic figure. First of all, in the field groups I didn't work every day of the week and I worked, you know, four-day week sometimes and five-day weeks and I didn't see an informant every day. What I am telling you is that when I was actually engaged in buy operations with informants, in other words, using an informant to make buys of street pushers, utilizing undercover people, the informant, when he would come and meet with me, 99 times out of 100 he could barelywalk, was sick and had no money and I had no money to give him, really, and I certainly couldn't support a guy's habit that had a $50 a day habit and most of these guys did and I would give

him whatever heroin I had available to me.

Q Did you realize at the time that you were giving them this heroin that you were committing a felony?

A To be honest with you, counsellor, as far as I was concerned, I wasn't doing it for profit, for law-enforcement purposes. I realized it was a felony. I also realized that every single detective in the Narcotics Division were doing it and also 99 per cent of the other non-narcotic detectives were doing it.

Q You had no illusions about what you were doing was legal, did you?

A Well, I had no illusions about whether what I was doing was legal, but I had a lot of illusions that what I was doing was right.

Q But no superior had ever told you, "Look, as part of your job it is perfectly okay to give these junkie addicts some drugs"?

A None of my superior officers instructed me that ishould give my informants drugs, that's true.

Q And you understood if this were to come out, if this were to be revealed, you would be in some trouble?

A I guess so.

Q Where did you keep your stock of heroin you would give out to these people every day?

MR. SAGOR: Your Honor, I object to that.

THE COURT: Sustained.

Q You did testify that you always had available some heroin to give out?

A Not always. Most of the time.

Q Most of the time.

Where would you keep the heroin that you --

THE COURT: I just sustained the objection.

MR. DERSHOWITZ: I thought it was sustained on the ground it wasn't a clear question.

THE COURT: It was sustained because it doesn't make any difference on the issues we are here to try where he kept it. What he did would relate to the issues, but where he kept it, no.

MR. DERSHOWITZ: I can get at what I want to get at in a different way.

THE COURT: I am afraid you will have to.

Q Did you have sole possession of the stock of heroin that you had or did you possess it jointly with other officers?

I am not asking you tell me the names of those officers.

MR. SAGOR: The same objection, your Honor. Isn't that the same one?

THE COURT: I will ask you to indicate to me what the relevancy of that is, Professor.

MR. DERSHOWITZ: Your Honor, the relevance is that Mr. Leuci has claimed that the allegations against him were a conspiracy and he denies the conspiratorial question and he created the impression that he was doing this alone, and I would want to find out if this was a rather more involved business or it just involved him personally.

THE COURT: That would be very interesting, but it doesn't relate to the issues that are before me. His conduct does.

Sustained.

MR. DERSHOWITZ: Fine.

THE COURT: I would have no doubt there are law-enforcement people looking at that very thing now and I would think that would be the appropriate place for it to be done.

MR. DERSHOWITZ: By all means.

Q Now, turning to Paragraph 3, No. 3 in the memorandum, "Leuci has admitted giving small quantities of narcotics" --

MR. DERSHOWITZ: May it please the Court, I take it it is proper for me to be reading from this document. I'm sorry, I didn't realize --

THE COURT: It certainly has been furnished to

you for purposes of conducting your examination.

MR. DERSHOWITZ: Fine, because it was under a protective order at some point.

"Leuci has admitted giving small quantities of narcotics to informant junkies for their own personal use and on one occasion giving one pound of marijuana to an informant. In this connection he has also admitted giving small quantities of narcotics from other narcotics peddlers and from his failure to turn in small quantities of narcotics seized during arrests."

Would you tell us the largest quantity of heroin that you ever seized and did not turn in?

A Well, the largest quantity that I have ever seized and did not turn in -- I am not sure. In other words, what would happen -- I will give you an example. In this particular situation where there was one pound of marijuana, it was from an arrest -- I can't remember exactly the amount, but it was between 40 and 75 pounds of marijuana that the arrestwas made and the informant in the case, I gave him one pound of marijuana.

Q What about heroin; what was the largest quantity of heroin you ever seized?

Let's start out with that. What was the largest quantity of heroin you ever seized?

A The largest quantity of heroin that I ever seized I would guess is in the area of between 5 and 6 kilos.

Q What would its street value be?

A I don't know.

What are you talking, street value as far as wholesale, retail?

Q Retail street value.

MR. SAGOR: Your Honor, what's the relevance of that?

THE COURT: Yes, sustained.

Q What is the largest quantity that you ever held back?

A I made an arrest of a person, two people, Jacob Clough and Robert Trapp. Information was given to me by The Baron. It was at the beginning of a very big and a very exciting investigation as far as I was concerned. The Baron played a very important part in it. We seized 1/8th of a kilo, just about 1/8 of a kilo in the arrest of Clough and Trapp, which is about four ounces. I took from that approximately a half an ounce, I am not sure, it might have been a little bit more, and I gave it to The Baron some time thereafter. Not directly, but I put it in his car.

Q Would that accurately be described as a "short ounce"?

A A short ounce is a dope pusher's term and --

Q You are familiar with those terms?

A I am familiar with those terms, but that is not a short ounce. A short ounce is something entirely different.

Q Would you tell us what a short ounce is? I am only asking this because The Baron described this as a short ounce and I want to know whether this is the same incident.

A A short ounce is a term used by dope pushers. When they buy from their wholesalers the weight is out. In other words, it doesn't weigh out to so many grains or so many grams.

Q In this memorandum the following phrase is used: "In this connection he has also admitted obtaining small quantities of narcotics from other narcotics peddlers -- from other narcotics peddlers."

That is set off differently from the next phrase which says "and from his failure to turn in small quantities of narcotics seized during arrests."

I want to focus your attention just on that first clause, "admitted obtaining small quantities of narcotics from other narcotics peddlers."

Would you tell us, without getting into details or names or even date as far as I am concerned, just tell

us about the circumstances.

A The circumstances of that are I had a number of addicts that were my informants. There were times when I didn't have heroin to give them. I didn't have bags to give them. I had another set of informants that were small-time street pushers and I would go to those informants and I would say, "Could you give me a couple of bags; give me three bags, four bags," whatever it was, and I would then in turn give it to my street informants.

Q Did you pay these pushers for the bags you got from them?

A No.

Q Did you give them anything in return for the bags of heroin that you got from them?

A No. They were my informants. They were small-time street level pushers and users themselves. They had access to heroin and at times I didn't have any heroin and my partners didn't have any and there were times when I would go to one of these informants and ask, but that only happened on one or two occasions and I took the bags of heroin from them and in return gave it to my street level informants.

Q And what did you give thesepeople in return for the bags of heroin that they gave you?

A What I gave them in return?

Q Yes.

A Was the fact that they were my informants. I don't think they expected anything in return from me and I certainly wasn't about to give them anything for it.

Q They were just willing to give you bags of heroin for free?

A Yes. Well, also that -- as I explained to you, that they were my informants in some situations. They certainly knew that I could have arrested them at any time. They were my informants and I allowed them to conduct their street business in order that they would give me information on larger-scale narcotics distributors or dealers. It's a whole web of narcotics dealing. It is a whole web of associations, starting from addicts, street level addicts to people like The Baron who was a non-user pusher.

THE COURT: You have put it in words of one-syllable. You permitted them to function as drug sellers in return for which they gave you information and occasionally narcotics.

THE WITNESS: True.

Q Do I understand your testimony as also being that they gave you narcotics in some way out of fear that if they didn't give you narcotics you might arrest them?

A I doubt that. I doubt that. That's not true.

Q What interest did they have in giving you free narcotics?

MR. SAGOR: Objection.

THE COURT: He already answered that and he just answered it to me. The ability to function on the street as pushers of narcotics unmolested.

That's the story, isn't it?

THE WITNESS: Yes.

Q Did you ever at any time pay anybody for narcotics?

A No.

Q Did anybody ever pay you for narcotics?

A Never.

Q Did any of the people that you ever gave narcotics to ever give you narcotics in return?

A No.

Q Did anybody who ever gave you narcotics, did you ever give them narcotics in return?

A Give me that again. I'm sorry.

Q What I am really asking is did anybody who ever gave you narcotics, did you ever give them narcotics in return?

A No, sir.

Q Did anybody who ever gave you narcotics -- who you ever gave narcotics to, did they ever give you narcotics back?

A No, sir.

Q But you did give narcotics to The Baron at one point?

A Yes.

Q What did you think The Baron was going to do with those narcotics that you gave him?

A Knowing The Baron I would assume that he was going to sell it.

Q You knew he was going to sell it.

A Yes.

Q You knew he was not a user.

A He wasn't a user, that's right.

Q So you knew at the time you gave the drugs to The Baron that he was going to sell those drugs to users?

A Yes.

Q When you gave drugs to other pusher addicts, did you know whether they were going to sell them or use them?

A I didn't give drugs to other pusher addicts. I just finished telling you that the people that I got drugs from -- okay -- were small-time street pushers. I never gave them drugs.

Q But you did give drugs to some --

A Addicts.

Q -- addicts?

A Right.

Q Are you saying that none of the addicts to whom you gave drugs were involved in pushing or selling drugs?

A Certainly none of the addicts that were working -- not the ones I knew. They could barely walk, much less sell drugs.

Q So you are fairly confident that in every case other than the Baron, when you gave drugs they used them themselves?

A As confident as I could be, as far as I knew, certainly.

Q Moving to Paragraph Numbered 4, on page 2, it says:

"Leuci has admitted receiving sums of money from informants alone and with other police officers."

Could you describe to us the circumstances under which this occurred, again without getting into any details?

A Well. I guess the best way to describe it is that the middle-level street pushers also gave me money as well as gave me information. There were times when

I would talk to a street-level pusher, and I would ask him, you know, for information, and I would talk, and I would say, whatever the conversation was, that the end result was that he would offer me money, and I would take it.

Q Offer you money for what reason?

A You know, in retrospect now, I mean, obviously the reason is that of course he's being able to function in the street and do his business, and I'm not going to arrest him, but he could have also accomplished that by just giving me information. But what happeens in reality, and you know, it's an evolving process, and it's something that many of us never realized what was happening, is that these people after a while stop becoming informants and they wind up must paying you, and these are some of the things that happened, and it happened to me, and it's very true and I'm very ashamed of it. It's true.

Q Could you approximate to us about how many of these payoffs you received over a period of time?

A I couldn't approximate exactly. I tell you at one point in time, I would say during the years that I was most active, between 1965 and 1970, I had maybe four of those type of informants or five of those type of informants, and I would take money from them.

As a total, I would say at the end of the year

my share would probably be something around $1500 to $2000 from each informant.

Q They would give you in sums of about how much each time?

A No more than $100, $150.

THE COURT: How many such informants? Did you say three or four?

THE WITNESS: Three or four. I think it should be noted in fairness that I would take money from these individuals, and sometimes give it to other informants.

Q Well, I want to make sure that the figure you gave me as to how much you got is a gross figure. How often in a given month would you be receiving $100 from an informant, would you say?

THE COURT: Well, if you are interested in a gross figure, Professor, he said it was between $1500 and $2000 per informant per year, and he had three or four such informants.

MR. DERSHOWITZ: What I want to do now is determine the accuracy of that statement by pressing him rather closely about the number of times that he got it.

Q About how many times during a month --

THE COURT: Did I quote you correctly in what I just read?

THE WITNESS: Yes, sir.

Q About how often in any given month would you meet your informant and get $100 from him?

A I would say probably an average of twice a month. An average, but sometimes it would be once a month, sometimes three times a month.

Q This wouldn't happen all that regularly? It wouldn't happen on a daily or even regularly on a weekly basis?

A No.

Q So maybe two or three times a month?

MR. SAGOR: Objection. He didn't say that.

Q Whatever your figure was, how many times a month, approximately? What was it your figure was?

A What I said was that it would happen, I would say, approximately twice, once a month, sometimes as many times as three times a month.

Q Would you say the average would be twice a month?

A I would say so.

Q Each informant?

A No. Amongst all four.

Q And the average payment was $100?

A The average payment was $100. I would say between $100 and $150, up to $200.

Q Up to $200. Well, my quick calculation is, if you averaged twice a month, that would be about twenty-four times a year. That would be at least $2400 and as much as maybe $3500. Does that require you to change your testimony?

A No. I think you are probably right. I don't understand your point. What do you mean?

Q My point is that you testified previously that it was about $1500, and now I have asked you whether you want to revise that upwards to about $2500, according to my calculations.

MR. SAGOR: My math is not so good, but as I see it we are talking about the difference between $2000 and $2400 a year. Do we need to spend time on this stuff?

THE COURT: Give us your best recollection as to the total from these sources.

THE WITNESS: I would say $200 a month on the average over a period between 1965 to 1969, into the beginning of '70. Actually -- it really falls off in 1970. I would say from 1965 until 1969.

Q Okay.

Now, you had no doubt in your mind at the time you were receiving this money that this was illegal?

A No doubt, Counselor.

Q No doubt.

Now, turning to Paragraph 5:

"Leuci has admitted selling confidential information and wiretaps and acting as a middleman between Police officers and subjects of narcotics investigations. Some of them situations were testified to at the Rosner, Gilroy, Oakland trial."

These were the kind of middleman transactions that you testified to at the Rosner trial?

A That's right.

Q At the Rosner trial you said there had been three or four involvemer , depending upon whether you considered the Simmons situation one or two. How many such situations are you prepared to testify occurred at this time?

A Actually acting as a middleman in situations that I testified to at the Rosner trial, I can remenber only one or two more than the three that I described at the Rosner trial. As far as selling, you know, confidential information between police officers and subjects of narcotics investigations, that's a different kind of a situation. That was the situations that I was asked many times to speak to someone or to give someone advice about a particular situation, and sometimes I would be paid for it and sometimes I would not.

Q So in your mind, then, you distinguish two categories of cases which are described in this memorandum as one category of case. You distinguish between cases in which you were a middleman of the kind that you testified to at the Rosner, Gilroy, Oakland trials and other situations where you simply sold confidential information or gave confidential information without receiving money in return?

MR. SAGOR: I object to the question. I can't understand it. If the witness can, I have no objection.

THE COURT: Overruled.

(To the witness) Do you understand it?

THE WITNESS: I think so.

A I think what you are saying is accurate, that there are two different types of situations, a situation where I was actively involved in the sale or actively acting as a middleman between police officers and subjects of investigations, and there were other situations where I am just asked by various people -- you can call them organized crime people or what-have-you -- for advice in various situations, and I would be paid sometimes for that. More times than not I wasn't paid, but I think those are separate situations.

Q All right.

Now, how many instances can you recall of this other kind, where you just sold confidential information or gave it away?

A Well, it wasn't confidential information that I was giving away. What it was was conversations with people who were subjects of investigation, and there would be something, for example, someone would come to me and say, "I think I'm the subject of an investigation. I'm not doing anything, you know, and this detective has reached out to me" -- in street terms -- "or trying to get in touch with me or wants to talk to me about something. What should I do?"

I would say, "Well, who is the detective?" And he would mention the name, and I would say, "Are you doing anything?" And he would say yes or no, whatever the answer, and I would give him advice to the best of my, whatever I think is right for that situation, and he would either pay me or not pay me.

Q What would be the most that you ever received in payment for that kind of transaction?

A I would say a thousand dollars.

THE COURT: Let me ask you something inthat category of selling information. Were you ever involved in telling any of these organized crime people whether

informers were talking about them or people, other people were talking about them, and did you get paid for that?

THE WITNESS: No, sir.

THE COURT: This about that, Mr. Leuci. Were you ever requested by any of these people to find out whether people were talking --

THE WITNESS: Oh, yes.

THE COURT: And did they pay you for finding that out?

THE WITNESS: Well, I wouldn't find that out.

THE COURT: Go ahead.

Q Were you ever asked by by any of these organized crime figures what the evidence against them was?

A No. What I was asked was only -- many times I had no real knowledge of the situation that they were involved in, and more times than not it was advice as to whether or not they could go and speak to the detective who was involved in the investigation, and most times the initiation of these kind of things, they were initiated by the police themselves and not by the organized crime people.

Q But there were some situations that were initiated by the organized crime people?

A Yes.

Q Let's focus on those.

A Right.

Q Can you remember any single instance where any non-law enforcement person ever came to you and said, "Look: I have been approached by some detectives. I want to know, do they have a case against me or don't they?"

A Yes.

Q Did they ever ask you how strong the case was?

A Well, you know, you're talking about a situation that I'm sure has happened. I remember situations like that. I would talk then to the detectives that were involved and either arrange a meeting with them or the people that were the subjects of the investigation, if that's what they wanted done, but, you know, I didn't have enough knowledge to be able to sit down and discuss, you know, their particular situations or, as the Judge points out, the informants, because I had no knowledge of who the informants were or things like that.

Q Let's focus not on your information but on what these people had asked you to find out.

Did anybody say to you, "Look: Before I decide whether to pay off the cops, I want to know how strong the case is. I want to know what kind of evidence they gave against me."

Did that ever happen?

A Yes.

Q Did they ever ask you to find out the names of people who might testify against them?

A No.

Q I am asking what they asked you.

A You are asking me about cases that are specifically State kind of cases, and people rarely testify in State Court -- informants don't testify in State Court, and they would always ask me, is there a stool in the case? "Who is the informant?" That's a common -- you could expect that they would ask me that.

Q So they would ask you that?

A Of course. And that was something that I wouldn't tell them, and that's understood.

Q Did they ever ask you whether there were wiretaps against them?

A Yes.

Q Did you ever tell them whether there were wiretaps?

A I didn't act as an emissary from the organized crime people to find out illicit information from the Police Department or the detectives that were involved without the detective's knowledge. I acted to the best of my ability as the guy between the both of them.

I wouldn't do something to hurt the detectives, and I wouldn't do something to hurt the other people that they were involved with .

Whatever each side wanted to do I did without trying not to fool the other.

Q To your knowledge, did detectives ever tell people, yes, there were wiretaps against them?

A Yes.

Q And did they offer to sell the wiretaps?

A Yes.

Q Did you participate in any such transactions?

A Yes.

Q Were wiretaps destroyed and sold to them and then destroyed?

A When you are talking about the sale of the wiretap, you are not talking about the sale of the physical wiretap, the evidence or the tapes. You are talking about the information that in fact there is a wiretap.

Q But were there any situations that you participated in in which there was a transaction, that is, a tape was turned over?

MR. SAGOR: Your Honor, are we talking about the Rosner case? I have no idea of the thrust of the question. Is that over and above the Rosner case?

MR. DERSHOWITZ: Over and above the Rosner case.

THE COURT: That is obvious.

(To the witness) Exclude the Rosner case from your consideration, if it ever was there.

Go ahead.

Q Were you aware of any situation where one of these organized crime figures or anybody else not in law enforcement made a deal with the detective to have physically turned over certain tapes?

A Yes.

Q And the tapes were turned over and presumably destroyed?

A As part of my investigation, that incident happened, but I was never part of a case where tapes were physically turned over to a subject prior to the time I became an undercover agent for the Government. That never happened.

Q But it did happen after you assumed an undercover role? I am not asking for details.

MR. SAGOR: He may be talking about a case --

THE COURT: If that is an objection, Mr. Sagor, it is sustained.

MR. SAGOR: Yes; it is.

Q Did there ever come a time, to your knowledge, when a detective sat down with one of these other people, organized crime or anything else, and the organized crime person said, "Now, I want to know whether any stoolies are in the case"?

A Yes.

Q Were you ever present or to your information do you know whether any police officials ever told any of these people that there were stoolies involved?

THE COURT: Professor, I told you at the meeting last week that I would permit you to interrogate this man about things thathe particated in, but I also indicated that I would not permit an examination into what he may have known about other people, in which he was not involved.

MR. DERSHOWITZ: I meant to ask him whether or not he was present or involved in any situations, situations that he started, that he transacted, that he brought the people together in, in which then one of the organized crime or other people said, "Do you know about any stoolies?"

MR. SAGOR: Your Honor, my objection only is, again, whether he was in an undercover capacity for the United States --

THE COURT: I will setttle that once and for all.

MR. SAGOR: Please do, your honor. Thank you.

THE COURT: Mr. Leuci, with respect to these questions, please eliminate from your consideration any cases in which you may have been working as an undercover agent, either for the special prosecutor or for the U. S. Attorney.

Do you have that in mind?

THE WITNESS: Yes, sir.

THE COURT: We are talking about the time only when you were actually and actively functioning as a police officer, before you started to cooperate with these agencies. That is the limitation of the questions he is asking you.

THE WITNESS: I understand.

MR. SAGOR: And over and above what he has testified to about the Rosner case. Those situations.

Q Could you tell us, then, with those limitations in mind, whether there was ever a situation where any of these people, organized crime or charged or accused criminals, ever said in your presence or to your knowledge were involved in cases where you brought them together -- "Do you know whether there's a stoolie in the case?"

A Yes.

Q Do you know from your knowledge whether or not any detective ever said in return, 'Yes, there is a stoolie

involved in the case"?

A As far as I am concerned personally --

MR. SAGOR: Can I object? It may be that what a detective says and the truth of it is different.

MR. DERSHOWITZ: Not asking for the truth of the issue.

THE COURT: Overruled.

A That kind of conversation happened all the time, and as far as I was concerned, anybody that wanted to utilize me or use m in that kind of situation understood that there had better not be any conversation about a stool involved in the case. That is not what I was there for, and I was not going to be involved in a situation in which a stool was going to be burned on what I knew or someone else knew. That's clear. It never happened.

Q It is your testimony, then, that you never participated in a conversation where any detective ever informed anybody who was charged with crime that there was a stoolie in the case?

THE COURT: No. That isn't what he said. As I understand his testimony -- and I would like to move on -- he said that in most cases, and very often, he was asked if there was a stool pigeon in the case, and he would then, in effect, say, yes, but he consistently and constantly

refused to name the stool pigeon.

(To the witness) Is that correct?

THE WITNESS: Yes.

THE COURT: That is what he is saying.

MR. DERSHOWITZ: Fine.

Q You did tell people in organized crime that there were stoolies involved in the case. That is what I want to get out.

MR. SAGOR: Objection.

THE COURT: Overruled.

A Yes.

Q All right. But it is your testimony that you never revealed the identity of these stoolies?

THE COURT: Professor, he said tht two or three times. Please move on.

Q Now, were some of the wiretaps that you sold or you participated in the sale of or arranged the sale of -- were any of these wiretaps to your knowledge illegal wiretaps?

A Not to my knowledge, no, sir. I am not talking above and beyond the Rosner case, and I mean, as far as the ones that I admitted to during the Rosner trial. The actual sale, selling of wiretap situations and wiretap investigations, I testified to three times in the Rosner

case that had to do with those kinds of [illegible]. There were maybe one or two other situations [illegible] similar to that, but if you are asking me now if any of the other situations that I got involved in, got involved with as far as the sales of wiretaps or that I knew the wiretaps were illegal or not, I didn't know.

Q Turning to Paragraph 6, it does say:

"Leuci has admitted utilizing and participating in the illegal utilization of electronic surveillance devices."

A Yes.

Q I take it you did know that some of the wiretaps that you were involved in were illegal?

A I think you are misreading it. It says that I utilized illegal or wiretapping equipment and eavesdropping equipment without Court order, and that's what that means, and that's what I'm saying.

Q Fine.

Now, my question is, did you ever sell or disclose or give over any illegal wiretapping or participate in anything in which that was sold to organized crime or other people involved in crime?

A The answer to that is no. The situation never occurred.

Q So all the wiretaps that you sold were legal wiretaps?

A I didn't sell wiretaps. I tell you that.

Q It says In this memorandum that:

"Leuci admits selling confidential information and wiretaps."

MR. SAGOR: May I object --

THE COURT: Well, it is obvious.

Put another question, please, Professor.

Q Now, could you tell us the total amount of money you earned during the years 1964 to 1970 in these transactions described in Paragraph 5?

A About $10,000, I guess.

Q Do you recall telling me about a week ago that it was as much as $15,000?

A It could be as much as $15,000.

Q That would certainly be in the ball park: $15,000?

A So would $10,000.

Q Somewhere between ten and fifteen thousand dollars over a five-year period of time?

A Yes.

Q Do you recall what you testified to at the Rosner trial relating to how much money you made in these transactions?

A Yes.

Q How much did you say you made?

A Five thousand, fifty-five hundred.

Q So it was between two and three times as much?

A Yes.

Q And how many such transactions, in total, would you say occurred? Now, I want to include cases where you gave information freely, where you sold it, where you acted as a middleman.

A I would say six. As many as seven times.

Q Do you recall --

A As few as five.

Q Do you recall telling me, a week ago, that it was ten to twenty times?

A But you know it's according -- you're telling me about as far as selling wire taps or selling investigations,

but I have had situations up to ten or twenty times where I have sat down with organized crime people and had conversations with them not involving any specific case or not involving any specific incident but just having a conversation with them involving themselves, and I received money on some occasions for doing that.

Q You understood each such occasion to be at least a violation of police regulations and possibly illegal?

A Yes.

Q I am asking you, totally, how many times did you violate police regulations, to your knowledge, or engage in conduct which you knew to be illegal in this general range of activities.

A I would say you are right. About twenty times.

Q Could it be more than twenty?

A It could be.

Q What would be the upper range, would you say?

A I don't know. I would say twenty, twenty-five times.

Q Over a period of five years?

A Yes.

Q Four or five times a year?

A Yes.

Q Not more than four or five times a year?

A It could be more, Counselor.

Q It could be how much more? Could it be as often as once a month?

A Well, you know, if you have to put it at an average, say twelve times a year that I sat down with somebody, I would say no, not quite that many times. I would say probably eight or nine times a year.

Q Eight or nine times a year. Six years we are talking about?

A No. We are talking about actually, now -- we start talking about these types of situations, 1967 to 1969, the early part of '70.

Q Have you told the Government about every single incident of this kind?

A As many as I can remember, Counselor.

Q Have you told them that there may be more?

A I told them that there certainly isn't anything more substantial, anything of importance that I may have forgotten, an incident involving a hundred [illegible]150 or 200 dollars or something like that; but I h[illegible]e told them every single thing that would have any importance.

Q Any importance --

A Not necessarily importance. Don't misunderstand me. Now, what I am talking about, anything that I should

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remember. In other words, I'm not trying to hide anything from the Government at all, that if there's anything in there, it's because simply I don't remember it.

Q It is possible that over the next few weeks you may remember some incidents that you don't remember now?

A No.

Q You have really exhausted your mind on that subject?

A That's right.

Q But I just want to get this clear once more. You did not tell the Government; you did not describe to them twenty instances. You did not say, "Now I am going to tell you about twenty instances. Here is one, two, three, four." You just gave them a general figure and told them about the nature of the crimes?

A I think you accurately portray it. That's right.

Q Were you ever asked to sit down and make a detailed list of every single criminal activity that you recall being involved in?

A Yes. I guess not really sat down and writing a detailed list, but I spent extensive hours going over the types of things that I was involved in and specific situations to the best of my ability, putting them together, and I said at the end of that -- and most of that was done by Joe

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Jaffe -- I said at the end of that that that's everything I can possibly remember, every single thing of importance that sticks out in my mind.

Q What was your salary as a police officer at this time?

A Well, I was a second grade detective. About $16,000 a year.

Q $16,000 a year?

A $17,000 to $18,000 a year.

Q Give me a range of what your annual income total was during this period of time, including your salary and total illegal money that you obtained?

A I would guess between thirty, thirty-five thousand dollars a year.

Q So it may have been as much as double your regular income?

A Yes.

Q Was there any year in which you earned substantially more?

A No.

Q Turning to the last numbered paragraph in this memorandum, Paragraph 7, it says that:

"Leuci has admitted receiving small sums of money from two attorneys and has also admitted giving money

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to an assistant District Attorney."

Now,when I spoke to you last week, you described to me, without giving me any names, the circumstances under which this money was paid. Could you repeat that.

A In one situation, I had arrested someone, and the fellow that I arrested asked that I would do him a favor and call his lawyer for him. He gave me the -- his lawyer's card. I knew the lawyer. I called him and told him that the fellow would be in court the next day.

I met the lawyer in court, and he gave me two hundred dollars.

On another situation, I was stopped in the hallway by a lawyer who I knew, and he asked me how I was going to testify in a particular case. He said that, "If you testify like that, exactly like that," he said, "If you testify like that, my client is going to go out."

I said, "I am going to testify that way, but I don't think your client is going out."

In any event, I testified exactly as I said I would. The client, one of two defendants in the case, was acquitted. The evidence against him was suppressed. And when I walked out in the hallway, he followed me out and gave me two hundred dollars.

Q Did he say he would give you more than that?

A Yes.

Q How much did he say he would give you?

A He said he would give me a thousand dollars.

Q Did he indicate he would give you any money prior to your testimony?

A No. I'm not sure. I shouldn't say that. I don't really know. I don't recall him saying that he was going to give me money prior to my testimony. I'll tell you that, you know, after he gave me the two hundred dollars in the hallway, strange as it may seem, I went to the District Attorney and reported it -- not the fact that he had given me the money, but I reported that I thought there was a fix in the case.

Q You reported what?

A That I thought there was a fix in the case, and I couldn't believe how this guy walked out of the case.

Q You reported to the District Attorney that there was a fix in the case, but you didn't report to him that you had received the fix in the case?

A Well, I wasn't fixed, even though I received two hundred dollars from the attorney.

Q Now, think back very hard. At the time you testified at that trial, had you been told that you were going to get money or might get money?

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A Well, to be honest -- You know, I don't remember whether he told me, you know, prior to my testimony or after it. I think probably he told me, before I testified, that, "If you testify like that you have a thousand dollars coming" -- something like that. And I said, "That's exactly the way I am going to testify, and that's the way it happened.

Q So you testified at a trial under oath, knowing at the time that you were testifying that if your testimony went a certain way you would receive a thousand dollars as a reward for that?

A Well, yes. My testimony was going to be exactly what it was. I hadn't changed my testimony.

Q But you knew if you testified in a certain way you would get a thousand dollars?

A Counselor, I am really not sure whether, you know, whether that money was offered to me prior to my testifying or after I had finished testifying.

Q Were you surprised when he came over to you afterwards and gave you two hundred dollars?

A Coming from him, I wasn't all that surprised.

Q So you had every reason to believe that at the time you testified, if your testimony went a certain way, you would be paid for having given that testimony?

A I think he possibly paid me so that I wouldn't bury

his client, so that I wouldn't perjure myself in order to put his client away.

Q He paid you to tell the truth?

A I think that's happened, you know -- I'm not sure. What I'm telling you is that I told him -- he asked me how I was going to testify in the case. I said, "This is how I am going to testify." He said, "If you testify like that, my defendant is going out." I said, "I don't think he is."

I testified like that. The defendant was acquitted. I walked out in the hallway, and he came over to me and gave me two hundred dollars.

Q Were there ever any other occasions when anybody ever said to you, "If you testify in a certain way, I will pay you money"?

A I was asked many times -- I'm trying to think -- No. Not really. Not outside the -- not outside the realm of the investigation itself. I was very -- I really wasn't, you know, associated in many situations with lawyers and things like that.

Q Since you told the truth in this case, why did you tell the DA that the case was fixed?

A Because I felt the case was fixed.

Q By whom?

A By the judge and by the guy, the lawyer, who was an

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ex-DA, running the case. I mean, two hundred dollars or no, there was no reason for this guy to walk out of the case as far as I was concerned, and he walked up to me in the hallway and handed me the two hundred dollars, and I took it. I should have thrown it back to him, but I didn't. After I took the two hundred dollars, I went to the District Attorney, and I said, "Listen, in the facts of this case, I got a feeling that this case was fixed. I was talking to the assistant District Attorney in the hallway, and the District Attorney told me this is a good case; you're going to hold this guy."

There was a third person who was standing there and said, "Hey, this thing will never stand up." And I said, "Who are you?" And the District Attorney said, "That's the Judge who is going to be sitting on the case."

So I assumed that the case was fixed.

Q Did you at that trial testify as to whether or not you had spoken to the defense attorney in that case?

A I'm sorry --

Q Were you asked at the trial whether you had ever had any contact with the defense attorney?

A No; I don't think so.

Q Were you asked whether or not you had received any payment for your testimony?

A No, sir.

Q Did you say anything at that trial which in retrospect strikes you now as anything less than the whole truth?

A No.

THE COURT: Would this be a convenient time for our afternoon recess?

MR. DERSHOWITZ: I have one more question on this line.

Q You certainly did not indicate in that court, at that day, that you had in any way spoken to anybody on the defense team or had received any payments?

A I was standing there talking to the assistant District Attorney. The defense attorney was standing right next to us, and the judge was standing right there, too.

THE COURT: Don't tell me the borough, but it was right out in the corridor in the courthouse?

THE WITNESS: This is like an anteway, right outside the courtroom. It was a small courtroom.

THE COURT: A robing room?

THE WITNESS: Well, not really the robing room. It was a hallway between the robing room and the courtroom itself. The courtroom was a very small room.

THE COURT: And the judge and the assistant District Attorney and the defendant's lawyer and you were all

standing around, discussing the case?

THE WITNESS: Yes.

Q And you were all participating in conversations about money?

A No one was participating in a discussion about money. The assistant District Attorney was reading the affidavit. The lawyer in the case was standing next to the District Attorney.

THE COURT: And the judge gave you an advance opinion?

THE WITNESS: The judge, who I didn't know was a judge, was standing behind the assistant District Attorney, and the assistant District Attorney told me, "Hey, from your affidavit, we've got a good case here." The judge said, "I've read that, and there's no way you could hold the guy. You may hold the first one but not the second one."

Q And this was before or after your testimony?

A Before my testimony.

Q Did this happen after you spoke to the defense attorney?

A That happened after I spoke to the defense attorney.

Q So at that time of this conversation, you knew that the defense attorney wanted you to testify in a certain way?

A Well, the defense attorney made it clear to me that

if I testified -- he made it clear to me how I was going to testify. I told him, "This is how it happened in the case, and that's how I am going to testify."

THE COURT: Was this a narcotics case?

THE WITNESS: Yes; it was.

A (Continuing) I said, "This is the way I am going to testify, and he said, "Well, if you testify like that, I don't see how you are going to hold the guy." I said, "I think you are going to hold him."

THE COURT: All right. We have heard the story for the fourth time.

MR. DERSHOWITZ: Yes. I think this would be a good time for a recess.

(Recess.)

(In the robing room.)

THE COURT: In addition to the lawyers, Mr. Farber of the New York Times is here, who has asked me whether or not he might have available a copy of the document from which Professor Dershowitz has been conducting his examination, and I have just gotten through saying that it has been so read into the record and so thoroughly disclosed during the course of the examination that I don't see that there is any confidentiality left, if there was any, in this particular document.

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I am told that this document was included in the protective order previously, and I have just stated that I would release it from the protective order, whereupon Mr. Sagor stated he wanted to put an objection on the record.

First, let me ask Professor Dershowitz whether he wants to put an objection on the record.

MR. DERSHOWITZ: I take no position.

MR. SAGOR: Your Honor, the reason for my objection is not due to confidentiality, since Mr. Dershowitz has read from it. Mr. Leuci's family has been harassed. If Mr. Farber is not going to xerox it and quote from it, I have no objection. But if the document, qua document, is xeroxed and made into something dramatic, I think from that standpoint, given what this detective has undergone, I think it would be to the best interests of everyone --

THE COURT: Are you talking about Detective Leuci? I just want to tell you that whatever Detective Leuci has undergone or is undergoing he very richly deserves and has brought upon himself.

So much for Detective Leuci.

I cannot dictate to the members of the press what use they will make of a document which has been unsealed. If they have such great acreage of unused space that they want to reproduce this, why, that's their baby. But it would

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be absolutely improper for me to tell him what he can do or cannot do with it, once it is released, and I decline to do so, and I release the document.

(Discussion off the record.)

MR. SAGOR: There are some problems that I want to avoid for the Court and that's what I want to go into now. I was just handed, your Honor, five minutes ago a letter from Mr. Fallas to Mr. Jaffe. I am going to let your Honor see it.

THE COURT: Just tell me what it is.

MR. SAGOR: It is a complaint against Detective Leuci that Mr. Fallas has that he knows about which is over and above anything we have provided him. It is a June 3 letter, 1974 from Brooklyn, New York, from a victim, so-called. Rather than have the Court read it I am just going to turn it over to Mr. Dershowitz. It is a complaint against Detective Leuci. I have some suspicions who may have sent it indeed, but in any event I am going to show it to him. I will now hand it to him.

Have you seen it?

MR. DERSHOWITZ: I had an interview with Mr. Fallas in which I asked him if he would apprise of any new revelations that may come out in his debriefing of Leuci and we arranged the following situation:

If any new revelations came out he would disclose them to the U. S. Attorney and he would send me a letter indicating that he had made such disclosure to the U. S. Attorney without giving me the details of disclosure so I

could make a request. I just now received a letter to me indicating that one allegation had been turned over. So that's the reason for it.

MR. SAGOR: I can give it to him rather than to your Honor.

THE COURT: No. You can give it to him.

MR. JAFFE: Judge, with regard to the question you posed what you should read, you have Exhibit 1. We handed up to you Exhibit 1-B this morning. We had it marked. Read 1-B. Do not read 1. 1-B is a retype of 1. That was the document in a folder which was handed up to you this morning.

THE COURT: This says 1.

MR. JAFFE: That's correct.

THE COURT: And I am not to read that?

MR. JAFFE: You need not read 1. Exhibit 1-B is a retype of that.

THE COURT: I am now going to return this to you and I will read 1-B instead of 1.

MR. SAGOR: Yes. That supersedes 1.

THE COURT: All right. Let's go to work.

(In open court.)

MR. DERSHOWITZ: We have one minor problem before you put the witness on the stand. A witness who was

subpoenaed and asked whether he could be called on Wednesday. Unfortunately it is my expectation, and therefore representation, that we will probably be going on until Wednesday on this hearing and I would simply like to indicate to the Court that we would like to comply with the witness' wishes.

THE COURT: I will hear him on Wednesday. I will be here on Wednesday.

MR. DERSHOWITZ: It may be out of order. That's the only point.

THE COURT: It doesn't make any difference.

Get the witness, please.

I do want to advise you that I intend to take my vacation, consisting of one week, and if necessary we shall sit on Friday and indeed on Saturday.

Go ahead.

Q Detective Leuci, in Paragraph 7 on page 2 of the memo that we have been reading from it mentions two attorneys gave you money. You told us about one. Could you tell us about the situation involving the second attorney?

A I told you about both situations. One situation was where I called the attorney and told him that his client was going to be in court the following day. I saw

him in court and he gave me $200.

Q That is one.

A The second one was when I testified in that case.

Q Oh, right. Those are different situations?

A Yes.

Q You received $200 simply for telling an attorney --

A Simply for telling an attorney that his client was going to be in court the next day.

THE COURT: You have been all through that, Professor. He arrested somebody. The man gave him a card and asked him to call the lawyer. He called the lawyer, told him his client was going to be in court the next day. The next day when he was in court the lawyer gave him $200.

Right?

THE WITNESS: Right.

THE COURT: I have that in mind. Let's go ahead.

Q Are those the only two situations where you ever received money from attorneys?

A Those are the only situations where I ever had a direct situation with an attorney.

Q Is it the only situation where you ever received money from an attorney?

A Yes.

Q You also mentioned you admitted giving money to an Assistant District Attorney.

A Yes.

Q Will you describe that situation.

A It was a situation when I was working in the field group in narcotics. I cam in to Night Court one night and -- with several prisoners and while I was walking through the hallway a pimp that was known to me from the street came over to me and told me that his brother had been arrested and asked me if I could intercede for his brother to see if I could get his brother's bail lowered. I told him that I would speak to the Assistant District Attorney that was calling the night calendar. I went up to the District Attorney who was calling the night calendar case and I said, "There is a fellow out in the hallway." I gave him his name. I said, "His brother is on the calendar. He would like to see him get out tonight on low bail or parole or something."

The Assistant District Attorney then told me, "Does he have any money?"

I went back and I spoke to the pimp and he said, "I have $500."

I went back and I spoke to the Assistant District

Attorney and I told him, "The fellow says he has $500."

He said, "Get it and give it to me."

I went out and got the $500 from the pimp and brought it inside and I gave it to the Assistant District Attorney as he was calling the calendar not three feet from the bench.

Q To your knowledge was the bail then given in a low amount?

A I think he was paroled, if I'm not mistaken.

Q So you directly participated in the payment of a bribe to an Assistant United States Attorney --

THE COURT: Assistant District Attorney.

Q Assistant District Attorney from a pimp?

A Yes.

Q How much did you get for this transaction?

A Nothing.

Q You did it as a favor?

A Yes.

Q To whom?

A To the --

THE COURT: What difference does it make? You already elicited that he participated in this bribe of an Assistant District Attorney.

Proceed.

Q Did you have a relationship with this Assistant District Attorney, a continuing ongoing relationship with him?

A I knew him. I had no, you know, relationship. I am not sure what kind of relationship you are talking about, but I knew him.

THE COURT: I think he means the kind of relationship where you were in a position to pay him money to do things, among other things.

A Yes. I was in that position, but situations never occurred other than that one.

Q This was the only situation where you ever paid money to an Assistant District Attorney?

A Right.

Q The only situation where you ever paid money to any law enforcement official?

A No. That's a little bit too nebulous to me. Are you including police officers, superior officers?

THE COURT: Let's not. He already talked about police officers ad nauseam.

Q No, I don't want to talk about police officers.

THE COURT: Let's talk about other public officials.

Judges, let's start there.

A I never paid a judge.

THE COURT: Go ahead.

Q Are there any other situations where you paid money or acted as a middleman in the payment of money to any prosecuting officials, parole officials, court officials, any governmental officials other than policemen?

A No, sir.

Q Have you recently spoken to Steven Fallas of Mr. Nadjari's office?

A Yes.

Q Have you revealed to him the same information that you revealed to Messrs. Jaffe, Puccio and Giuliani?

A No, sir. Not in detail.

Q Have you told Mr. Fallas about any crimes that you did not tell the Federal people about?

A NO, sir.

Q Do you know any man named Carmello Morales?

A Who?

Q Carmello Morales.

A I know a Morales. I don't know a Carmello. Morales is a common name. Carmello Morales is the name you are telling me about?

Q Yes.

A The name doesn't ring a bell to me at all.

Q Do you know anybody named Morales who owns a grocery store at Hoyt & Pacific Streets in Brooklyn.

A Yes. Okay. That's the Morales -- a Morales that I know. That Morales is named Gerardo Morales. He is now deceased. I knew him in 1965 and 1966. He was one of the informants that I spoke about. He was a street-level dealer or pusher addict informant and he is one of the people on one or two occasions I had taken money from.

Q Did you ever arrest Mr. Morales?

A Yes.

Q Can you tell us when you did?

A I don't remember. In 1965-66.

Q Did there come a time where Mr. Morales was paying you $300 to 400 during repeated periods of time?

A No, sir.

Q Did he ever pay you as much as $300?

A No, sir.

Q Did you ever threaten him with arrest unless he continued to pay you money?

A No. Mr. Morales was a valuable informant. He was a good informant. I think Mr. Morales gave me $100 once at Christmas and $100 one other time. I never

took money from him on any kind of ongoing situation. He was my informant and a productive informant.

Q Did you tell the Federal people about Mr. Morales?

A Yes.

Q You told him specifically about the store and meeting him and receiving money from him?

A I am fairly certain I mentioned him as one of the people that were in the street.

Q When is the last time that you recall having committed a crime?

A The last time is when I received that $200 from the lawyer I called to tell him that his client was going to be in court the following day.

Q When was that?

A That was in 1970.

Q What month?

A I think it was either July or August of 1970.

Q In July or August of 1970 where were you working?

A In the Brooklyn District Attorney's office.

Q You were already an undercover informant in the law-enforcement business?

A No, sir.

Q You were not working in an undercover capacity?

THE COURT: He wasn't an informant, he was a

police officer attached to the District Attorney's office.

Q Were you attached to the District Attorney's office for the purposes of undercover work?

A No, sir.

Q You were simply conducting investigations?

A That's correct.

Q And the last crime you committed occurred before you started to engage in undercover work either for the Knapp Commission or for the Federal Government?

A I never worked for the Knapp Commission. I worked for the Federal Government. The last thing I did I just told you was that situation and I have never done a thing since that time.

Q You have never committed any crime since that time?

A Nothing.

Q Think hard.

A I don't have to think hard, Counselor.

Q You don't have to think about November 1972 when you perjured yourself?

A I am sorry. Okay.

Q So you committed a crime in that year. Any crimes since that time?

A No, sir.

Q When was the Gilroy-Oakland trial?

THE COURT: He perjured himself at those trials, and that is a crime.

Go ahead.

Q When was that?

A About three, four months ago.

Q Do you understand that you had committed a crime as recently as two weeks ago?

A No.

Q Are you aware that it's a Federal crime, punishable by a substantial prison sentence, to lie to an Assistant United States Attorney who is interviewing you?

A No.

Q You did, however, lie to an Assistant United States Attorney within the last two weeks, did you not?

A Yes.

Q You told us before that the Baron, Mr. Lawrence's affidavit was a lie, although it may have contained some minor details that are correct; is that right?

A No. I didn't categorize it that way.

THE COURT: I don't think that is a fair characterizawtion. He told you that which he thinks was a lie and that which he thinks wasn't a lie and I don't think you have accurately reflected it in your question.

MR. DERSHOWITZ: I am sorry, your Honor.

THE COURT: It's all right.

Q Is it true that on some occasions between the years 1968 and 1971 you received -- you gave heroin to Leuci -- I'm sorry, you gave heroin to Larence in the amount of one-eighth to one-quarter of a kilo?

A No.

Q You did admit that you gave some heroin to the Baron; correct?

A Yes.

Q Could you date that for us?

A It was the date of the arrest of Jacob Clough and Robert Trapp. I would put that in 1968.

Q How long did you continue to use the Baron as an undercover informant?

A Well, I used the Baron as an undercover informant up until 1971, I guess.

Q When in 1971?

A I am not sure exactly the date that he and I found the parting of the ways, but into 1971 I was utilizing the Baron as an informant.

Q Were you giving him money during that period of time?

A I neither was giving him money during that period

of time -- I stopped getting money from the Baron or taking money from the Baron some time in 19 -- well, prior to going to the Brooklyn District Attorney's office, so I would say that's in late 1969 - early 1970 and I also stopped paying him money around the same time.

Q Before you stopped giving him money and before you stopped getting money from him, how regularly would you have financial transactions with him? How regularly would you give him money or get money from him?

A I would either give him or get money from him -- it is according to, you know, how we were working. I couldn't put it on an average type thing. I think that whenever he asked me for money, if I had it I would give it to him. If I was short I would ask him for money and he would give it to me.

Q About how often did that occur? Let's stick to the times that he gave you money.

How often did he give you money?

A I would say the Baron gave me money on an average of nine, ten times a year.

Q How often did you give him money?

A About nine of ten times a year.

Q So you made between 18 to 20 transactions per year.

For how many years ?

A Between 1967 -- I guess 1968 through 1966 through 1970. Two years.

Q What was the nature of the sums of money involved in these transactions?

A Between 50 and 100, $150.

Q At one point did he turn over to you three automobiles?

A Not one point. At three different times I bought three automobiles from the Baron. I bought a 1960 Oldsmobile, and I paid him I remember $200 for it.

I bought a 1964 Plymouth from him and I paid him something like $350 for it and I bought a 1966 Ford station wagon and paid him $400 for it.

Q On each of those occasions did you pay him fully in cash?

A In each of those occasions -- on two of those occasions I paid him in cash and on one of those occasions I paid him by check.

Q Do you have that check?

A Yes, sir.

Q May we see it?

Do you have it with you?

MR. SAGOK: I have a check.

THE COURT: You have the check?

MR. SAGOR: I have a check.

THE COURT: A check?

MR. SAGOR: A check.

THE COURT: Who si it made out to?

MR. SAGOR: I will look at it, your Honor.

THE COURT: Yes.

Let me have it, Mr. Sagor.

Is this the check to which you are referring?

THE WITNESS: Yes.

THE COURT: Mark it as an exhibit for identification.

MR. SAGOR: We will have it marked as a Government exhibit.

We have no objection.

(Government's Exhibit 1 was marked for identification.)

xx Q Mr. Leuci, is this the item that you were referring to when you told last week that you paid in cash for some of the cars, but that you paid in something other than cash for one of the cars?

A Yes.

Q And this was the item that you refused and the Government refused to turn over to me and you said we would

have to wait until the hearing to find out what commodity it was that it was paid in?

MR. SAGOR: Objection, your Honor. That's a speech and an unfair characterization of what happened.

THE COURT: Just turn it over.

MR. SAGOR: There was no request for it, your Honor.

MR. DERSHOWITZ: There certainly was, your Honor.

THE COURT: Gentlemen, that is not the issue I am here to determine.

MR. DERSHOWITZ: It seems to me that --

THE COURT: Please. I don't want to hear any more colloquy about it. You have it now.

MR. DERSHOWITZ: May I look at it for one minute, please?

THE COURT: Yes.

(Pause.)

Q This is a check made out to whom, do you remember?

A To Richard Lawrence's wife, Audrey Monroe. That's the car -- for the 1966 Ford station wagon, $400. That's the way the Baron wanted the check made out, to his wife.

Q Were there any other occasions where you paid

Mr. Lawrence or Mrs. Lawrence any money by check?

A No.

Q This is the only check you ever paid out to Monroe?

A That's right.

Q Or to Lawrence?

A Yes.

Q And the circumstances under which you paid out this check is that Mr. Lawrence asked you to pay him by check?

A No, he didn't ask me to pay him by check. I told him, which I am sure he has forgotten, that I was going to pay him by check and that the car -- as I remember, the car was registered to Audrey Monroe. We were buying the car actually from Audrey Monroe and not from Richard Lawrence, so the check was made out to Audrey Monroe.

Q When did you first disclose this check to the Government?

A When Lob Morvillo first asked me about the three cars.

Q And you gave Lob Morvillo this check?

A Yes.

Q The other transactions occurred when?

A What transactions are you talking about?

Q Other car transactions, I'm sorry.

MR. SAGOR: Excuse me, your Honor. I may be thick, but what does the car transactions have to do with anything?

THE COURT: Well, the affidavit that was submitted in support of the motion contains an allegation by Mr. Baron, or whatever his name is, that the cars were given, not paid for.

MR. SAGOR: I understand the witness though has said that he got cars.

THE COURT: You may cross-examine him in a limited way.

Go ahead.

Q What were the dates of the other car transfers?

A w can't give you the dates off the top of my head.

Q Earlier or later?

A Earlier or later than when?

Q Than September 1971.

A That was the last car, the 1966 Ford station wagon and I bought that in 1970, as I remember.

The Plymouth was in 1968 or so and the Oldsmobile -- it was a 1964 Plymouth. It was repainted taxicab, in fact the Plymouth was, and the Oldsmobile was a 1959 or '60

Oldsmobile that I bought in '67 or '68.

Q But this 1966 car you bought in 1970?

A '70 or '71, I am not sure.

Q Was it while you were working for the Federal Government or before?

A I would think it was after.

Q After you started working for the Federal Government?

A Yes.

Q Now, you started working for the Federal Government in February of 1971?

A Yes.

Q And it was shortly thereafter that you bought the car?

A Yes.

Q Did you tell anybody in the Federal Government who you were working for that you were buying a car from somebody who you knew to be a corrupt informant and narcotics dealer and pimp and everything?

A I didn't see any reason for it.

Q Is it possible that you bought the car before you started to work for the Federal Government?

A It's possible.

Q It is possible.

What is the latest possible time that you may have bought the car?

A You know, I don't understand what you are saying.

Q February, March 1971, April 19 --

A I would say it was probably March of 1971, around there.

Q Would you be very surprised if it were later than March?

A No.

Q How late could it possibly have been?

A I don't know, Counselor. It could have gone into the spring, May, April.

Q It may have gone as late as May or April?

A Yes.

Q Did you pay him by check immediately or did you wait a long period of time?

A I waited a period of time, as I remember, but I think that what had happened was that he had bought the car and he had the car for quite some time before I got the car.

Q When did you get the car?

THE COURT: I really think this is going a little too far. I really do.

MR. DERSHOWITZ: Your Honor, the check is dated September 22, 1971.

THE COURT: Why didn't you put that to him then instead of spending ten minutes on where he got it.

MR. DERSHOWITZ: Because I would like him to first establish where he bought the car so I can confront him with the fact that the check was made out later.

THE COURT: I think we can all agree that in the scope and range of what this man has admitted to doing all day long, the acceptance of a $400 car is petty larceny.

Q One of those cars was for your brother; is that right?

A Yes.

Q Which one was that?

A I think it's the 1960 Oldsmobile. I am not sure.

Q How much did you pay for that?

A $250, as I remember.

Q You sold it to your brother -- you gave it to your brother and your brother gave you $250?

A No. I gave it to my brother and I paid the Baron.

Q Did your brother realize he was getting a gift from you that you had paid for?

A I would imagine so.

Q Your brother knew that you had paid for the car and was giving it to him?

THE COURT: Mr. Sagor, have you ever heard of making objections when things are irrelevant?

MR. SAGOR: I am scared to.

THE COURT: Don't be scared.

MR. SAGOR: It is not the Bureau of Motor Vehicles. That will be my final comment.

Q Now, you mentioned in your testimony previously that on one occasion you gave marijuana to somebody.

A Yes.

Q Was that the Baron?

A No.

Q Did you ever give marijuana to the Baron?

A I never gave marijuana to the Baron. I had an occasion with the Baron where I made an undercover buy of a large amount of marijuana. The Baron was the motivating force in that, in that he brought the people to me. After the buy and the seizure I saw the Baron some time later on that evening and I noticed that he had a pound of marijuana in his car and I asked him how he had gotten it and having spent the whole night with these people he wound up with a pound of marijuana. I didn't give it to him

and the Laron has his own ways of getting it. I didn't give it to him. It was in his car, though. I saw it.

Q After the arrest of one Darminio, did you give the Laron money?

A Yes. I gave the Daron and his brother-in-law some money some time thereafter, yes.

Q How much?

A I don't recall exactly. It was something around $300, $350.

Q Would it refresh your recollection that you told me about a week ago that it was between $500 and 1000?

A Okay. About $500. I don't think it was as much as a thousand. It wa around 500.

Q In his affidavit The Baron says, "On numerous occasions when I assisted Leuci in setting up arrests for narcotics sales, Leuci gave me portions of seized narcotics. In one such case my brother-in-law William Monroe and I helped set up the arrest of two sellers, one named Peter Dormenio, who drove an El Dorado Cadillac. Dormenio delivered a package to us at Dormenio's service station at Oak Point Avenue, two blocks south of Hunts Point in the Bronx, where my brother-in-law regularly serviced his salvaged vehicles. Dormenio, and the man with him, were arrested. Later that day Leuci called me in my home and told me to come to the Simpson Street Police Station."

Up to that point is thatcorrect?

MR. SAGOR: Objection, your Honor. How can one possibly answer that? It means 15 things. It is impossible to answer.

THE COURT: Sustained.

Q Did there come a time when you called Lawrence and asked him to come to the Simpson Street Police Station after you had arrested Dormenio?

A I didn't call him. One of my brother officers called him.

Q In your presence?

A I don't remember whether I was there or not, but he called me that he had called him and that The Baron was coming down to the station house.

Q Did The Baron then come down to the station house?

A Yes.

Q Did The Baron leave with narcotics that night?

A Yes. Over my objections.

Q Over your objections?

A To my brother officers, that's right.

Q But you were there when The Baron received the drugs?

A I was there when one of my partners gave The Baron a package which I believed to be narcotics.

Q Would you tell us the circumstances that occurred and the nature of your objection.

A Apparently my partner and The Baron had had a conversation.

Q Who was your partner?

MR. SAGOR: I am going to object to that.

THE COURT: Sustained.

MR. SAGOR: He also testified to this before on two occasions. This is the other occasion. We are coming right back to something we have been over this morn-

ing.

MR. DERSHOWITZ: Your Honor, our method of examining this witness --

THE COURT: Your method may be what it is, Professor, but you are going to have to conform with the Court's administration of this case.

MR. DERSHOWITZ: By all means.

THE COURT: I say to you not unpleasantly that this is taking too much time; we are going over matters two and three times and I want that stopped.

MR. DERSHOWITZ: Your Honor, perhaps a better way of doing it would be this: We propose at this point to call Mr. Lawrence to testify. We understand that the government will claim that Mr. Lawrence's testimony is false. We would like to get Mr. Leuci to admit as much as possible as to the truth of the Lawrence affidavit.

THE COURT: I understand what you are doing, but you have asked him certain of the questions already this morning. Try not to repeat yourself.

MR. DERSHOWITZ: Fine.

THE COURT: Go ahead.

Q Could you tell us the nature -- I don't think you testified as to this, but the nature of your objections and the circumstances under which you objected to your

fellow officers giving drugs to The Baron?

A I adamantly objected to giving narcotics to The Baron from Day One. The only situation that I gave narcotics to The Baronwas when I put some narcotics in his car after an arrest which I considered was very important and to keep The Baron motivated. I was having a lot of problems with him then, but from that time on I was adamantly againstgiving The Baron any kind of narcotics. We were at the Simpson Street station house. One of my brother officers came to me and told me he had a conversation with The Baron over the telephone and that he wanted to give The Baron a part of the seizure. I told him that I was dead against it; I thought he was crazy to give The Baron anything; that you couldn't trust The Baron as far as you could throw the station house and you would be silly to give The Baron any narcotics.

I said I had some money that I wanted to give to him and his brother-in-law, who really did most of the work in the case and I would rather do it that way.

My brother officer,.he told me that as far as he was concerned he would rather save me money and give The Baron the narcotics, and we were both arguing about it. We went downstairs. The Baron was there and my brother officer gave The Baron a package in front of me and I

couldn't see what it was exactly, but I assumed it was the narcotics that he was talking about and I was opposed to it, but I was --

Q When did this occur?

A It was the night of the Domenio Telenzio arrest.

Q Which was?

A I can't tell you the date off the top of my head.

Q Approximately what year?

A 1969-1970. 1969.

Q You are fairly sure that this occurred prior to the time when you stopped committing these crimes?

A I am sorry. Give me that one again.

Q Are you fairly sure that this incident, the Domenio arrest, occurred during the time while you were still committing the crimes?

A Yes.

Q Now, did there come a time when The Baron assisted you and Sergeant Cohen in setting up the arrest of three men near the White Castle on Allerton Avenue near Bronxwood Avenue in the Bronx?

MR. SAGOR: Objection, your Honor.

THE COURT: Sustained.

Q Did The Baron give you -- I am sorry, did you

give The Baron any money or any drugs as a result of the arrest that occurred at the White Castle on Allerton Avenue in Bronxville in the Bronx?

A No.

Q Do you recall that transaction?

MR. SAGOR: I am going to object to anything about that transaction, your Honor, after the last answer, giving the time that occurred in 1971 -- mid-'71.

THE COURT: All I am interested in really is whether or not this witness participated in any criminal conduct in connection with The Baron in this particular transaction. He said no, so far as he is concerned, and that's the end of it.

I take it you are going to put The Baron on and The Baron will testify differently. Go ahead.

Q Did you assist Mr. Leuci in the case of a seller named Gilberto Miguel Junco?

A Yes.

Q When did that occur?

A 1971 some time. In 1970 -- '70, '71.

Q In that case did you give The Baron any money?

A No.

Q Any drugs?

A No.

Q Did any policeman in your presence give him drugs?

A No. Not that I know of.

Q Do you remember an arrest involving a man named Cadillac Joe Morales?

A Morales? Yes.

Q Did you obtain and give to The Baron any drugs as a result of that arrest?

A No. I gave him some money in that arrest.

Q You gave him some money in that arrest?

A Yes.

Q How much money did you give him in that arrest?

A I don't remember. A couple of hundred dollars.

Q You gave him a couple of hundred dollars in the Morales arrest.

Do you remember when that occurred?

A Cadillac Joe Morales; is that the name?

Q Yes.

A I think we got the names, you know -- I am sorry, I am talking about Marco Felice and Cerio Vega. Cadillac Joe -- I think it is the same guy, but I think you have the wrong name. I didn't arrest anybody named Cadillac Joe Morales.

Q Did you arrest anybody the name of Cadillac Joe

who owns the Spanish --

A Yes. The Spanish Grocery Store on 136th Street and Lexington Avenue.

Q In that arrest you gave the Baron some money?

A Yes.

Q Did you give him any drugs?

A No.

Q Do you know when that arrest occurred?

A Yes.

Q When?

A Some time in 1968, '69.

Q Not 1971?

A No.

Q Would it surprise you to learn that it did occur in 1971?

A Not only would it surprise me, I think I would have a stroke. That was a long time before -- talk to the Baron again, Mr. Dershowitz. He has got his dates confused.

Q Did you participate in the arrest of a woman known as Clementine?

A Yes.

Q Can you tell us when that occurred?

A In 1970.

Q When?

A The winter of 1970. I was working in the Brooklyn District Attorney's office. The Baron assisted us in the arrest. He gave us information on a packaging plan and Clementine Fazon and several other people were arrested. The Baron certainly felt that he deserved something for his endeavors in that arrest and the Baron got nothing.

Q No money?

A no money and no junk. Nothing else.

Q Were you assisted by the Baron in setting up the arrest of a seller named Mastraboni?

MR. SAGOR: Your Honor, can I object? I don't think it is contested here that the Baron was apparently Detective Leuci's informant at times.

THE COURT: I am going to sustain the objection and I am going to direct you not to continue that line of questioning.

Q After you stopped giving the Baron money in 1970, how did you keep, as you put it, motivating him to act as an informant?

A The Baron and I -- you know, he really wasn't acting as my informant then. He constantly made these games with me where he would call me up and tell me he is

going to start working for another agency or another detective and I would tell him to go ahead and work with other people and then there were times when he would work with me. I can't tell you what motivates the Baron. I don't think anyone can. I don't know why he still came around and why he still attempted to make cases with me. I think my initial idea in 1968 or '69 when I gave him something from that Clough and Trapp arrest, which is the Mastraboni one, the same one you are talking about, the Baron always had hopes some day sooner or later I would give him the kind of narcotics that he thought I was able to give him.

Q Now, you did tell me in the interview that we had that the Baron was involved with you in a transaction with a man named Slim.

A Come one, I mean, I told you that the Baron was not involved in a transaction with a man named Slim. I told you that Slim was an old-time informant that was having serious problem in Brooklyn with -- I guess the best way to describe it is ripping off people in the street, guerrillas. He was an old man and that he was being threatened on a daily basis and I asked the Baron to do me a favor, to go down there with a few of his henchmen and give this guy Slim a hand in holding off the predators in

the neighborhood where Slim owned a grocery store -- I mean a barbecue place.

Q Did you tell me that you then asked the Baron to go down with some strong-arm people and help --

THE COURT: He just said that, Professor. He just said that.

Go ahead. Put another question.

Q Did you get money for that, for sending the Baron down?

A No, sir.

Q You were doing a favor for Slim?

A Yes.

Q Did Slim at any point pay you money?

MR. SAGOR: Objection, your Honor. What is the relevance of this?

THE COURT: Overruled.

A I had gotten money from Slim on one or two occasions, this is true.

Q On June one or two occasions?

A Yes. On several occasions.

Q What did he give you money for?

A You know, the same reason that I talked about before. You know, Slim was an old-time informant. I would go to him and ask him for information while I was

there. He would ask me "Are you short?" and I would say I was and he would give me a hundred dollars or I would say to him I am short and I would go to him and he would give me a hundred dollars. It was that kind of a relationship.

Q Now, you have testified that you gave drugs to certain addicts.

A Yes.

Q You have also testified that certain people paid you money. Can you think of a single situation where anybody who you gave drugs to ever, ever paid you money?

THE COURT: You mean for the drugs?

MR. DERSHOWITZ: No. I want to know whether any money was ever paid.

A Period?

Q Period.

A Well, I just finished explaining that in 1968 or '69 I gave the Baron some narcotics. After that period of time I have had exchanges of money with the Baron over a period of two years, so in that sense your question is, you know, absolutely -- yes, it has happened.

Q Now, were there any other people, any other addicts or pushers who you gave drugs to whoever at any

time paid you money?

A No, sir.

Q You never received a single penny from any person other than the Baron to whom you gave drugs?

A That's right.

Q You did receive money from quite a few people involved in the drug trade, and you did give drugs to quite a few people involved in the drug trade other than the Baron --

A No, no. Hang on -- I'm sorry. I didn't give drugs to people that were involved in the drug trade. I gave drugs to informants who were addicts, who had severe addictions, that were working with me. That's who I gave drugs to. The only time I gave drugs to anyone else other than these addicts was in the one situation where I gave some narcotics to the Baron after that case, and there was another time when I gave a pound of marijuana to another guy, which is I guess more than what you would call a nickel bag. But other than that, I have never given any quantity of drugs to anybody.

Q Did the man you gave the marijuana to ever pay any money to you?

A No.

Q Was he a user?

A Of marijuana?

Q Yes.

A I would guess, yes.

Q Was he a seller of marijuana?

A I would guess.

Q Do you know from your personal knowledge whether he used all of that marijuana personally?

A To my personal knowledge?

Q Yes.

A No, sir.

Q Is it possible he may have sold it?

A I would say it was more likely that he smoked it.

Q How much was it, again?

A A pound.

Q Pardon my question as an uninitiate, but how many cigarets --

THE COURT: It's a lot of marijuana.

MR. DERSHOWITZ: It's a lot of marijuana. Okay.

Q You have told us that at the time that you revealed to the Federal Government the crimes that you did reveal to them prior to the Rosner trial, you made sure to tell them only about crimes that were four years old; is that correct?

A No, no, no. I tried to make sure that I told them about crimes that involved only myself, that did not involve other police officers, and if it did involve other police officers, they were the types of things that these other police officers could not be prosecuted for.

Q But in fact every one of the crimes, every single one of the crimes that you told the Government about prior to the Rosner trial involved other people?

A Yes, but they weren't the types of crimes that

there could have been made cases against.

Q Why not. Will you explain that.

A Because they were involving organized crime people, who weren't about to come in and testify about the things that had happened.

Q But you could have testified. You knew about the crimes --

MR. SAGOR: Objection.

THE COURT: Sustained.

Q Did you tell the Federal Government, when you did tell them about certain crimes, about any crimes that you thought might be within the period of the limitations?

MR. SAGOR: Objection,your Honor.

THE COURT: Sustained. I don't think, from my own point of view -- and I am the one who is going to have to decide this -- that we are using our time productively.

MR. DERSHOWITZ: I am sorry, your Honor. What I am trying to focus on is the period of time between 1970 and the present.

THE COURT: I understand; and he has answered a number of questions about that. You have sought repeatedly to find out whether he engaged in any of these illegal activities after he had in fact started to work with Government authorities, be it the Knapp Commission or the United States

Attorney's office, and he has answered those questions, and I don't see any point to repeating them.

Q Now, for a period of time of approximately three months, you persisted in lying to three assistant United States Attorneys about whether or not you gave drugs to the Baron; is that correct?

A That's correct.

Q Could you explain to us why you persisted in lying, even during that period of time, about that allegation?

A Yes.

Q Okay.

A I personally felt, rightly or wrongly, but I felt very strongly that the Baron making these allegations against me, that were, to say the least, disgusting and untrue for the most part, that for me to give him any kind of credibility, I just couldn't -- I just didn't think that I would do that. I just couldn't handle that. The reason I couldn't handle that is that -- because that kind of stuff is going to show up tomorrow on the front page of the Daily News or the front page of the Times, and Mr. Pressman is here, and it will be on television, and I can do without my family seeing that.

So, okay, I gave him narcotics the first time or the second time -- it's going to make his whole garbage

affidavit credible, and I wasn't going to do that.

Now, take it one step further. After my conversation with you, as far as that's concerned, I was going to maintain that stance, and after I left you I had an additional conversation with Mr. Curran and Mr. Mollo and Mr. Giuliani and Mr. Jaffe, and I realized that I had gone too far, that there was much more here that was at stake, and it was the whole Southern District's reputation, and if it turns out I am lying now and if it turns out I am incredible, it's a stupid thing for me to do. But personally, me personally, as far as I was concerned, it wasn't stupid.

I felt that's the reason I held it back. But after my conversations with, like I say, Mr. Mollo and Mr. Curran, and then with Rudy Giuliani and Joe Jaffe, I felt that whether or not Eddie Rosner walks away from this case is not important to me any more. It certainly isn't important to the Southern District of New York, and that's what they told me. The only thing that's important is that the truth in this case comes out, and that's the truth.

That's as much as I can tell you about.

Q You mentioned holding back these last two things. What else have you held back other than the things you told us about giving drugs to the Baron?

A The two things, the two situations in that affidavit

that describe the Baron getting narcotics from me during the Clough and Trapp situation and then again at the Simpson Street station house. Those are the things contained in his affidavit, and even though I didn't directly give it to them, they are true.

Q In other words, you told the Government recently that the Simpson Street station house situation was true, even though you had told them it wasn't --

MR. SAGOR: Objection. He just testified --

THE COURT: Sustained.

Q Had you previously told the Government that the Simpson Street episode was true --

MR. SAGOR: Objection, your Honor. He just testified that it was --

THE COURT: Sustained. The record is clear on this point.

Q When you told the Government that these last two things were not true, did the Government ask you specifically whether you had ever given drugs to the Baron?

MR. SAGOR: Objection, your Honor. He didn't say the last two things were not true. He said they were true.

MR. DERSHOWITZ: I am sorry.

Q When you told the Government the last two things were true, had that been in response to questions by the

Government, or had you blurted it out?

A I'm not sure I understand. I think it was in response to questions or a number of questions, and the question not being specifically to that, but questions, you know, about --

THE COURT: He wants to know, did you volunteer or did they ask you?

THE WITNESS: I volunteered it.

Q But as of last week, you were prepared -- you had decided in your mind you would sit here in this courtroom and again perjure yourself in response to my questions.

MR. SAGOR: Objection, your Honor.

THE COURT: Sustained. The witness has testified to that previously. Put another question, please.

MR. DERSHOWITZ: May I have two minutes?

THE COURT: Yes. Hopefully, that means your ...ation is approaching its conclusion.

MR. DERSHOWITZ: I hope so.

THE COURT: I wonder if I can ask you people to be seated. You can continue your conversation, but I don't want anybody standing.

Q A minute ago, in a rather moving statement, you said that you had decided that it wasn't really important any more whether or not Mr. Rosner walks away --

MP 8 Leuci - direct

MR. SAGOR: I object to that characterization, your Honor.

THE COURT: That is substantially what he said. Overruled. Go ahead.

Q (Continuing) Was there a time when it really was important to you that Rosner not walk away?

A I would say, you know, in any case that you work on as an agent, a detective, you like to win. Okay? And it was the same thing in the Rosner case as far as I was concerned.

Q Did you realize when you testified at the Rosner trial that your testimony would be somewhat stronger admitting to three or four crimes rather than to four hundred cimres?

MR. SAGOR: Objection.

THE COURT: I will permit it.

A No, sir. I didn't feel that way. I didn't believe that, you know -- you're talking about four hundred crimes again. We can go into 250 or 300 times of giving junk to informants in the street. I told the jury at the time, and I say again, I was a corrupt policeman, and I wasn't caught, but I said I was a corrupt policeman. I didn't say Mr. Rosner was facing an honest policeman but a policeman who had been involved in narcotics for seven years and was

corrupted, and I felt I was being fair to the jury and fair to Mr. Rosner.

Q Do you recall describing yourself to the Rosner jury as a breath of fresh air?

A I described myself as a breath of fresh air at the Rosner trial?

Q Yes.

A I should doubt that.

Q Do you recall saying in your testimony that you acted as a middleman, that people trusted you?

A Oh, boy --

Q That you were regarded as a breath of fresh air, because you were truthworthy, and it wasn't somebody who was really on the make to make a lot of money, that you were highly regarded both by police people and some of these others as a breath of fresh air?

A What you are saying is, I was regarded as a breath of fresh air by organized crime people. That's what I said, right? Yes.

Q Because you were basically honest?

A Because I was basically not a shakedown artist.

Q Is it your testimony that when you thought about perjuring yourself at Rosner's trial, it never occurred to you that your credibility would be somewhat shaken by admit-

ting to the various crimes that you have now admitted to?

A My concern was not for my credibility Mr. Dershowitz. My concern was for my brother officers that I had worked with for a number of years and that I was going to have to implicate into situations that I wasn't willing to.

THE COURT: Professor, we have come full circle. He has already testified to this, earlier this morning, and he is now repeating. The last two answers I have heard at least twice.

Q Did you ever sell wire taps to a man named Mastrobuono?

A Did I sell a wire tap to Mastrobuono? No. I arrested Mastrobuono for selling heroin.

Q Did you ever offer --

MR. SAGOR: Objection, your Honor. He said he has been through so many of these wire tap situations.

THE COURT: Sustained.

MR. DERSHOWITZ: Excuse me one moment, your Honor.

THE COURT: Yes.

Q You testified that the reason, basically, that you didn't reveal your prior crimes was your unwillingness to involve other officers, which is very understandable.

A Well, that's part of it. If you break it down into, you -now, a pie of three sections, one third -- that

was at least a half, okay?

There was also the idea that I would have to be confronted with that, and my family would have to be confronted with that strictly coming from me voluntarily, and to me it was an insanity to do something like that.

Q So as to the crimes of giving drugs of narcotics addicts and taking money from narcotics addicts, you were primarily motivated by a desire to protect yourself?

A I can't tell you what my motivation was. What my motivation was that I had committed myself to doing four illegal acts or three illegal acts and one more, and I wasn't about to admit to anything else.

Q Were you at all concerned that you might be prosecuted for these crimes if you admitted to them?

A No, sir.

THE COURT: Didn't you ask him this very set of questions this morning about his concern about being prosecuted? We have been all over this. I don't want to hear it two or three more times. We went over it in detail this morning.

He has told you his reason why he didn't expect to be prosecuted. There was a discussion about whether the statute of limitations was three years or five years. What is the point of doing it again?

MR. DERSHOWITZ: I accept your Honor's admonition.

Q You were shown during this year at some point the IAD files?

A Yes.

Q Involving Cardi, Jacobs, Rudiccio, Clough and Trapp?

A Yes.

Q Are there some things in the Cardi file that are basically true?

A Yes.

Q When did the Federal Government learn that there were things in the Cardi file that were true? When did you tell the Government that?

A I can't give you that date exactly. I think Mr. Jaffe can give you that date. It was during my debriefing of the IAD files with Mr. Jaffe.

Q And, generally, at that same period of time, you also told him that some aspects of the Rudiccio, Clough, Trapp and Jacobs cases were true?

MR. SAGOR: He has testified to that.

THE COURT: Sustained.

MR. DERSHOWITZ: What I am trying to find out -- I am at a disadvantage. I have never seen any of these disciplinary files.

THE COURT: It doesn't put you to any advantage to ask these questions three or four times.

Q Were you ever shown any other disciplinary files, any other disciplinary charges that are contained in the IAD files, by other people other than the ones I have just mentioned?

A Yes.

Q Could you tell us who they are?

A Basically what they are are the same ones from other people.

Q Can you tell us --

A The same allegations.

Q Can you tell us who these people are?

A I can only think of, you know, one off the top of my head, a Robert Torres, a patrolman who had been arrested and suspended from the Police Department, made an allegation against me.

Q Is there any truth whatsoever in the allegation made by Officer Torres?

A No. He said I controlled gambling in Brooklyn, or something like that.

Q Can you think of any other allegation in the files that may have any basis in truth whatever?

MR. SAGOR: I object, your Honor. What is the

basis for this?

THE COURT: Sustained.

Q Were you told by Federal officials that if you testified falsely here today, that you would be prosecuted for perjury?

A Yes, sir.

Q Do you believe that to be true?

A Yes.

Q If you testify here falsely, do you believe that you will be prosecuted for perjury?

A Yes; I do.

Q Had you been told before last Friday that if you lied to Federal officials you would be prosecuted?

A Yes.

Q When were you told that?

A I have been told that several times; many times within the last six, seven months.

Q And after having been told that, you persisted in lying?

A Yes; until today.

Q Until today?

A Until today. I mean, today is when -- You are talking about lying to you last week?

Q Today is the first day in which you started to tell

the truth?

A I told you --

MR. SAGOR: Objection, your Honor.

THE COURT: Sustained.

Q Do you have any reason to believe, to expect that you will in fact be prosecuted for the lies that you have told to the Government recently?

A No.

Q Do you know for a fact that you will not be prosecuted for the lies that you told the Government recently?

A No.

Q Do you know for a fact whether you will be prosecuted if it turned out tomorrow or the next day that you had told a lie and brought that to the attention of the Federal Government?

A I would believe I would be prosecuted.

Q You think that today is really Judgment Day?

A Yes.

Q Anything up to today you could get away with, but if you testify falsely today you will be prosecuted?

MR. SAGOR: Objection.

THE COURT: Sustained. Go to another subject.

Q All right. Now, in 1970 you began to work for the Federal Government?

MR. SAGOR: Objection. He said February 1971.

MR. DERSHOWITZ: I am sorry.

Q In February of 1971 you began to work for the Federal Government?

A Yes.

Q Have you had a relatively continuous working relationship with the Federal Government between February of 1971 to date?

MR. SAGOR: Objection. That has been asked three times.

THE COURT: Sustained for just that reason. We have been all over that, over and over and over again. I direct you to desist from that line.

Q Have you been paid by the Federal Government?

A I have been paid within the last couple of weeks subsistence, if that's what you are talking about, while I am staying here in New York: fees for my hotel room and things like that.

Q Who has, generally, been paying your salary since February of 1971?

A The New York City Police Department.

Q Not the Federal Government?

A No, sir.

Q You have been on loan from the State Police or the

City Police to the Federal Government?

MR. SAGOR: Objection.

THE COURT: I invite you, sir, to tell me how it makes the slightest difference to the determination I must make whether he has been on loan or not.

MR. DERSHOWITZ: Part of our theory, your Honor, is that Mr. Leuci, by perjuring himself at Rosner's trial, was acting as a Government agent, and that it is enough to establish that Mr. Leuci perjured himself without even beginning to establish that the Federal Government, through the Assistant United States Attorney, was involved.

It is part of our theory that Mr. Leuci was part of the Federal prosecutorial team that was making this case and that if we can establish the nature of his relationship with the Federal Government, we need not go even further and establish any Federal Government knowledge of perjury.

THE COURT: I hold that that has been sufficiently developed at the present time. The objection is sustained.

MR. DERSHOWITZ: May we make an offer of proof or get a stipulation that Mr. Leuci was an employee of the Federal Government, working for the Federal Government as a Federal agent?

THE COURT: I shall not compel that.

MR. DERSHOWITZ: May I make an offer of proof --

THE COURT: I want you to conclude with this witness first.

MR. DERSHOWITZ: At this point, your Honor, we would like to request an opportunity to read the IAD files and the Taylor memorandum and any other memorandum that has been turned over to the Government so that we can continue to cross-examine, or examine this witness and test his recollection and credibility on the basis of other accusations made against him, some of which in the past have proved to be in part true.

THE COURT: Those are the exhibits that I presently have to read, myself, are they not?

MR. SAGOR: No, your Honor. One is an exhibit that you have looked at before: the summary of the allegations against Detective Leuci, which he was cross-examined about.

THE COURT: I declined to turn that over; is that correct?

MR. SAGOR: Yes, your Honor. The Court of Appeals sustained that.

THE COURT: I adhere to that ruling.

MR. DERSHOWITZ: We would like legal argument on that. The situation has drastically changed.

THE COURT: I don't think it has. Conclude with the witness.

MR. DERSHOWITZ: We would like to see the Goe memorandum, of which we have seen only an expurgated copy.

THE COURT: Do you have any further questions of this witness?

MR. DERSHOWITZ: We will have questions after we have seen this documentation.

THE COURT: Then it is understood that if I turn over to you anything, your examination will be limited to that which is turned over to you.

Do you have any other examination that you want to do now?

MR. DERSHOWITZ: May I consult with co-counsel for three more minutes and inquire?

THE COURT: By all means.

(Pause.)

MR. DERSHOWITZ: I think we are ready to conclude our examination at this point.

Q Do you recall an incident w en you were in a car with another detective, named Gene D'Arpi, and you were practicing writing the signature of a man named Nunziato?

MR. SAGOR: Objection.

THE COURT: Overruled. At least it has the sound of something new.

MR. SAGOR: It was mentioned before, your Honor.

A Absolutely, unequivocally not.

Q Have you ever written the name Nunziato?

A No, Counselor.

Q Were you in any way involved in any aspects of the theft of what has come to be known as the French Connection drugs?

A That may sound great for the media, Counselor, but absolutely not.

Q Were you in any way involved in any capacity in the theft of any drugs from the Clerk's office?

A No.

Q Have you ever stolen any drugs from the Clerk's office?

A No, sir.

Q Have you ever threatened any narcotics user or dealer with prosecution if they did not pay you moeny?

A No, sir.

Q -- with arrest if they did not pay you money?

A No, sir.

Q Have you ever testified falsely in any trial, proceeding or interview with a United States Government official other than the ones to which you testified here today?

A No, sir.

Q Now, you testified rather extensively to the fact that you thought you would have no trouble with the Baron because you could "handle" his allegations.

MR. SAGOR: Objection. That is not a new one, your Honor.

MR. DERSHOWITZ: No. I think you will see what the new aspect is.

Q (Continuing) And you testified that you were not really terribly concerned about one-on-one situations with generally disreputable people, because you could handle that.

THE COURT: All right. Now, put the question. We will regard that as an introduction.

Q (Continuing) Did you think you could handle Eddie Rosner in a one-to-one situation?

A One on one? He would walk away with me, Counselor, and you know it.

Q Why is that?

A He's better than I am.

Q Far more believable and credible?

MR. SAGOR: Objection, your Honor.

Q I want to ask you this one final question, and I would like you to think very hard about it.

You have told us a great deal about crimes you

may have committed. I think it should be clear that at this point if you answer this question that there are no other crimes that you are going to tell us about, that you would be committing perjury.

MR. SAGOR: Objection, your Honor. He said there may be one or two other instances. To the best of his ability he has told us all.

THE COURT: What is the question?

MR. DERSHOWITZ: I want him to search his memory and think very hard as to whether there are any other instances, minor, trivial, de minimis -- characterize it any way you want -- any other instances which he has not told this Court about today.

MR. SAGIR: Objection to the question.

THE COURT: I will permit it.

(To the witness:) Do any such instances occur to you now?

THE WITNESS: No such instances occur to me now, Counselor.

MR. SAGOR: I don't know if Mr. Dershowitz is finished with --

THE COURT: He said it was the last question. I presume it was.

MR. DERSHOWITZ: If subsequent testimony comes out

or if further questions become appropriate after we examine the IAD files, we would like to recall the witness; but at this time we have no further questions.

MR. SAGOR: Your Honor, with respect to cross-examination by the Government, the Government has no questions of Detective Leuci.

THE COURT: The witness is excused. However, he will hold himself subject to the order of the Court.

(Witness excused.)

THE COURT: I am going to have to read a number of things before we resume tomorrow, so we will start court at ten-thirty tomorrow morning.

(Adjourned to July 2, 1974, at 10:30 a.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
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lzal A 533

UNITED STATES OF AMERICA

vs.

EDMUND A. ROSNER

New York, July 2, 1974,

Hearing resumed.

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THE COURT: Good morning, gentlemen.

MR. SAGOR: Your Honor, before the called witnesses there is something that should be put on the record.

I understand from the New York City Police Department that a subpoena was served on them for information concerning a John Lusterino and Robert Leuci in connection with any electronic surveillance of either of those two individuals. Your Honor will remember previously that we were asked by defense counsel to look into certain matters. The government has indeed conducted its investigation. I turned over the results of our investigation to Mr. Dershowitz and I want to hand up to the court and mark it either as government exhibits or court exhibits, perhaps Government's Exhibit 2, which is the report from the Nassau County District Attorney's

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office which indicates to their knowledge they have no overhears of Detective Leuci. I have been informed by the New York City -- may that be marked Government's Exhibit 2.

(Government's Exhibit 2 was marked for identification.)

xx MR. SAGOR: I have been informed by the Police Department they do in fact have an overhear in connection with a Lusterino wire tap of Detective Leuci. I have given to Mr. Dershowitz a copy this morning of that and I am told by the Police Department they will continue to look for any other voice interception of Detective Leuci on that wire tap, and I would like to introduce a representative of the Police Legal Department to make a report to the court because, after all, it is their report and not the government's.

THE COURT: Yes.

MR. WILLIS: Leroy D. Willis, Jr., No. 1 Police Plaza, New York, New York, counsel for the Police Department.

THE COURT: I will hear you.

MR. WILLIS: I have in my possession here a subpoena duces tecum issued by defendant's counsel asking for certain information for -- between a Mr. Lusterino

and a Detective Leuci. The Police Department was specifically asked for some information pertaining to a conversation from a real estate office which was allegedly held on about -- specifically to a real estate office in Astoria Boulevard. Our investigation uncovered the conversation that these two people had but it was in a real estate office on Rockaway Boulevard, your Honor. However, we are willing to submit this information to defense counsel.

We also were asked for some information of a conversation which took place in Lakeville Manor in Great Neck, Long Island, New York, New York. Your Honor, this information was within the jurisdiction of District Attorney Cahn of Nassau County and I understand that Mr. Sagor has just given you some information as to the response from Mr. Cahn as to the type of information that he had. Whether he has it or not I do not know. The New York City Police Department would not have anything of that nature because it's outside of our jurisdiction. We are willing to hand this particular information over to defense counsel, which we have done.

THE COURT: Thank you, Mr. Willis.

MR. SAGOR: Your Honor, may this be received into evidence as the information we received as such?

THE COURT: Is that the letter from Mr. Cahn?

MR. SAGOR: Yes. That was marked 2 for identification. I would like that to be 2 in evidence at these proceedings.

THE COURT: All right.

(Government's Exhibit 2 was received in evidence.)

MR. SAGOR: And Government's Exhibit 3 for identification is the report from the Police Department, from Inspector Hess, enclosing my letter to him and the state of the information that the legal representative has just given. May that be marked 3 in evidence, please. I have given Professor Dershowitz a copy of both documents, Government's Exhibits 2 and 3.

(Government's Exhibit 3 was received in evidence.)

MR. SAGOR: Your Honor, just a brief housekeeping measure. Mr. Shaw was requested by defense counsel, as your Honor may know, he is on trial before Judge Cannella involving the case of Congressman Barasco. I have asked Mr. Shaw when he could be available. He tells me the first time he can break might be at 9 o'clock tomorrow morning. I realize it is an imposition on the Court --

THE COURT: Not at all. You know perfectly well I am in this building at 8.15. It is no imposition on me.

MR. SAGOR: He is requesting it of the Court.

THE COURT: 9 o'clock tomorrow morning, gentlemen.

Now, I have a few housekeeping matters of my own to take up with you. I have been trying to wade through everything that I have seen.

With respect to, and I have not succeeded, I might say, but I am on the way. With respect to Court Exhibit 2 for identification, which is the Goe memorandum.

MR. SAGOR: Yes, your Honor.

THE COURT: I would like to state for the record, of course, that I have read that memorandum and the only thing that I might be inclined to make available to

you, Professor Dershowitz, would be the $50 matter about which he testified yesterday, which appears in this memorandum in just about the same form as he testified to it yesterday. So in that he has already said it and in that there is nothing inconsistent about it, I see no point in making even that aspect available to you.

MR. SAGOR: Your Honor, we have made it available. The extracted -- we extracted that --

THE COURT: That is the only part. That is the only part. Now, with respect to this blockbuster you gave me the other day, the debriefing of Mr. Leuci, what if any of that have you given to Professor Dershowitz?

MR. SAGOR: We, as you know, your Honor, have given him the first time when we submitted that to the Court, we gave him a Court Exhibit 1-A which was Mr. Jaffe's memorandum which Detective Leuci read from the other day.

THE COURT: Do you have this before you?

MR. SAGOR: Yes, I do.

THE COURT: Let us talk about page numbers.

What has been made available to Mr. Dershowitz so far?

MR. JAFFE: The only thing made available to Mr. Dershowitz specifically in writing is the Exhibit 1-A, which is an extract of what appears on pages 2 and 3.

Paragraphs numbered 1 through 7.

THE COURT: Why --

MR. JAFFE: With regard to the other information contained in this file, Professor Dershowitz on his interview of Detective Leuci, when questioning Leuci, covered substantially everything that's contained in here in more detail than he did on his examination yesterday. Of course, not going into names involved.

MR. DERSHOWITZ: I am not sure I can agree with that. I don't know what's in that file but my recollection is what I did yesterday was almost precisely a replication of what I did on the interview.

THE COURT: Here is the situation, gentlemen.

This document is some 78 single spaced pages and I have read through page 60 so far and I am going to tell you what I think ought to be made available. I make no ruling, Professor Dershowitz, because I am going to invite the comment of counsel. I am going to recess at 12.30 today so that he can have in mind what I am about to ask him. Let us set out the background for this thing.

In a large number of instances, apparently the same matters are gone over and over and over again, having to do with -- there are enormous repetition. I, in going through this, preliminarily indicating what I might be

inclined to make available, have made the same thing available, I will tell this to you, Professor, on at least two occasions but when it got to be the third and fourth, I really -- because the identical information appears with relation to those issues and the third, fourth and fifth time they are referred to in the memorandum.

I would like the Government to tell me when we reconvene at 2 o'clock this afternoon why I should not make the following pages available.

1 through 21.

22 through 25 with the elimination of any names that might still be confidential or that might expose some individual to danger, but in any event, the sense of 22 through 25.

Page 25 starting with E -- wait a minute, with respect to what I have just said, on page 25, I would limit that.

"Allegations probably concerned the detective named," and I would stop there. I do not propose to make the name available.

On page 25-E through 26-I.

With respect to page 27, I would make that available striking the names from the first paragraph.

By the way, I want to make clear to both sides

that when I say striking the names, I want to strike any names which may divulge confidential police information or information which might tend to jeopardize the well being of anybody whose name appears in there. Or matters in which law enforcement agencies still have some of these things under investigation.

I am not referring to the second paragraph on page 27. I am not inclined to make that available.

Pages 28 to 30, up through R on page 30.

31 and 32, eliminating the names from B and C, other than Leuci, of course, up to and only up to that part of the second paragraph, which is the letter C, the words ending "that he had spent the money", and put a double bar after that, because I don't propose to make any of the rest of that page available.

33. I would make it available other than D-1, eliminating the names, other than Leuci.

34 I would make available, except I would strike the last sentence in E-1.

I would eliminate G-1. That is one of those instances in which the information has already appeared three or four times, and it is not relevant or else it is cumulative.

On page 35, so much of C as relates to the matter we have under inquiry here, eliminating any names that may not be necessary. I do not propose the remainder of that page be turned over. Nor would I turn over page 36, nor would I, on page 37, with the exception that in H-1 I would eliminate the names.

I would not make any information available from pages 38, and 39, or on page 40 up until B-3, which I would Make available, eliminating the names.

Page 41, I would make the last paragraph available,

eliminating the names.

Page 41, I would make the last paragraph available, eliminating unnecessary names.

On 42, the first paragraph eliminating any names.

Nothing on 43.

MR. JAFFE: Your Honor, you said 42 the first paragraph?

THE COURT: Yes, sir.

On page 44, first paragraph --

MR. JAFFE: Excuse me, Judge, 43 nothing?

THE COURT: Nothing.

On 44, it is not the first full paragraph. It starts at the very top "And that Leuci would get" eliminating names. I would make the second paragraph available, the first full paragraph -- I beg your pardon. That which appears as 2, I would make that available. Again, the remainder of that page I regard as cumulative and I am inclined to give the information that's contained there.

On page 45, with respect to B-3, the second paragraph of B-3. That's all.

On page 46, the first paragraph.

Nothing on page 47 -- I beg your pardon. On page 47, 3-F, eliminating any unnecessary names.

48, the last paragraph, deleting name.

Nothing on 49.

50, I would make H available on that page. Nothing then until page 58.

On page 58, the bottom entry which is entitled "Richard Baron" and that, of course, extends over to 59.

Nothing on page 60.

That's as far as I got.

MR. DERSHOWITZ: May it please the Court, the record should reflect that we have had no opportunity to read this and --

THE COURT: Of course not. But, I am going to preserve this so should it become necessary that the Court of Appeals --

MR. DERSHOWITZ: That's precisely what I had in mind.

One other matter, if your Honor please.

We were handed yesterday, I was surprised to get this, two very extensive complaint files against Mr. Leuci by the United States Government. I asked myself why did they give you two complaint files out of the dozens they have refused to turn over to us and turned over to you. When I read it, the answer became clear. These were complaint files which were essentially baseless, extensive

complaints, checked out, and there was nothing for us to examine. If the Government is willing to turn over to us, without turning over to the Court, these extensive files which mention names, go into detail, and which are not open to cross-examination, how in logic and fairness can they refuse to turn over those files which we elicited from the witness yesterday, contain at least some proof, go to more relevants events and go particularly to the present time.

MR. SAGOR: Your Honor, the reason for giving M.r Dershowitz this is twofold.

One, we didn't want to burden the Court with a half hour argument whether he should have gotten it or not, and the second reason, and this I told Mr. Dershowitz, from Leuci's personnel folder and I don't think the Court has seen these two baseless allegations before.

THE COURT: The rest of it was presented to me at or about the time of the trial, and I ruled from it.

MR. SAGOR: Yes, your Honor. You did not see one civilian complaint from '64 and something else --

THE COURT: I don't think we need spend any more time On that. I have a modest proposal to make.

Is Mr. Lawrence going to be called as a witness by anybody?

MR. DERSHOWITZ: That is a decision that has not yet been made.

THE COURT: In the interest of saving time, I want to suggest, as you all know, it's my practice to read the papers before I hear any argument or discussion and I have read Mr. Lawrence's affidavit, obviously, and I should like to consider whether instead of putting Mr. Lawrence on the stand, we could not agree upon a stipulation, that is, you and the United States Attorney that his affidavit would constitute his direct testimony and then permit the United States Attorney to cross-examine him and you, of course, woul d have a chance on whatever redirect there is.

MR. DERSHOWITZ: May we take that under advisement?

THE COURT: I was going to suggest you now answer now.

Call the next witness, please.

MR. DERSHOWITZ: The next witness will depend on the Government's convenience. I gave the Government a list of several witnesses for today, Mr. Shaw, who will be here tomorrow, and Mr. Morvillo and --

THE COURT: Why don't we start with Mr. Morvillo?

MR. SAGOR: Yes, your Honor, I think he wants to be first.

THE COURT: I want to caution the Government not to have any break in these proceedings, to wait for people to come from different places. I would rather the witnesses --

MR. SAGOR: They're all waiting, your Honor.

THE COURT: Call Mr. Morvillo.

- -

R O B E R T M O R V I L L O , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q Mr. Morvillo, you are now a private attorney practicing in Manhattan?

A I am.

Q Before that, you were in the United States Attorney's office?

A Yes.

Q As Chief of the Criminal Division?

A At one time, yes.

Q When did you first come into the case against Edmund Rosner?

A I'm not sure that I understand the question. You mean in a trial capacity as the person

assigned to try the case or when did I become familiar with the investigation?

Q Will you tell us when you first became familiar with the investigation?

A I must have become familiar with the investigation while it was happening.

Q At the beginning of the investigation?

A Sure, while it was happening.

Q When did you first take over the case as chief trial counsel?

A I don't have any recollection. It must have been a couple of months before trial.

Q Whom did you take it over from?

A I don't think anyone was really technically assigned to the case. Mr. Sagor was involved in pulling together much of the information around the case. He may have even presented it to the grand jury, I don't recall, but there came a time when we had to divide up a number of cases which came out of the so-called Leuci investigations and Mr. Seymour had asked me personally to try the Rosner case.

Q Had you had any general responsibility for the so-called Leuci investigations, Leuci cases?

A As Chief of the Criminal Division, I was con-

sulted as things went along and there were a lot of group decisions made during the course of the investigation and I was part of the group that was helping to make the decision.

THE COURT: This was a U. S. Attorney's case rather than a Task Force case; is that right?

THE WITNESS: Yes, your Honor.

THE COURT: As Chief of the Criminal Division, you had overall supervision and responsibility as well as every other case?

THE WITNESS: Yes, your Honor. Specifically, Mr. Shaw and Mr. Scarpetta were going on the day-to-day aspects of the case.

Q There came a time when Mr. Shaw left his position as an Assistant United States Attorney and became head of the Strike Force?

A Yes.

Q Was that the time you took a more active role in the preparation of this case?

A No.

Q What was the relationship between those two acts?

A None, as far as I know.

Q Before Mr. Leuci testified at the Rosner trial, did you speak to him in preparing for trial?

A Certainly.

Q Did you have discussions with him about his criminal activities?

A Certainly.

Q Can you us precisely what he told you about his criminal activities at that point?

MR. SAGOR: Could we have some time frame, if it is important, your Honor?

Q Could you tell us when these discussios prior to trial occurred?

A No. I mean, they were continuing preparation sessions. At the time I was preparing for trial and was still trying to run the Criminal Division, and most often I think I dealt with Mr. Leuci at night, and tried to carry on the responsibilities of running the Criminal Division in the daytime. And, there were a series of conversations which we had as we approached time. Obviously, the preparation became more intense.

Q When did you first find out, if you recall, that Leuci had committed or had admitted committing three or four criminal acts?

A I have no specific recollection of the exact date.

Q Was there any period of time when you did not

know that?

A I did not -- that I did not know he had admitted three or four --

Q Yes.

A I guess the answer to that is yes. I had never really inquired with any great amount of depth as to what Leuci's prior misconduct was until I got into the actual preparation for trial.

Q At that point, did Leuci tell you that he had committed four crimes or did somebody else tell you that?

A At the very least, Leuci and I did have conversations in which he admitted to me that he had these four specific acts of misconduct. In addition to that, I had conversations with several of the other individuals who were close to the investigation.

Q Who, for example?

A Mr. Scarpetta, Mr. Shaw, Mr. Armstrong, Mr. Seymour.

Q Did you ever speak to Mr. Grately?

A I'm not sure who Mr. Grately is.

Q Did you ever speak to Mr. Coe?

A No, I don't think I spoke to him in connection with this particular investigation.

Q Were you aware that on the eve of the trial Mr. Leuci was considering in his own mind not revealing the four crimes that he had admitted at trial?

A No.

Q Does this come as a surprise to you?

A Not really as a surprise to me, but he had never indicated to me that he was not going to admit the four crimes, once he did in fact tell me the specifics and substance of those four crimes.

Q Did you ever find out to this day that in addition to the four crimes that Mr. Leuci admitted prior to trial he had admitted a fifth crime involving $200 that was found in a house that was searched that he participated and took $50 of?

A Does this deal with the so-called Coe memorandum?

Q I am asking you --

THE COURT: Yes, it does.

A Mr. Sagor showed me the Goe memorandum about the time you made your motion for a new trial I think.

Q About the time we made our motion for new trial?

A Approximately that time. I came in to give him an affidavit I believe in connection with the motion and it was at that time that he first showed me the Goe memorandum. That's the first I had heard of that.

Q That is the first you ever heard of the Goe memorandum?

A Correct.

Q Is it also the first time you ever heard of the incident described in the Goe memorandum?

A Yes, I think so.

Q You have no recollection at all of ever having been told previously or having known previously there might be a fifth crime?

A Committed by Leuci?

Q Admitted, committed by Leuci.

A I have never been told that by either Leuci or by anybody else.

Q When you spoke to Leuci and elicited from him,

or when he told you about the four crimes, did he tell you about one crime in detail and then say there were three others like it?

A Again, it is difficult to answer that question because it all came up in the context of preparation for trial, and I can't tell you at this point, I can't specifically reconstruct the preparation for trial. I do know that after a series of conversations with Mr. Leuci it became clear to me that he was saying that he had committed only four specific acts of misconduct and I pressed him on that at great length and on a great number of occasions because I wanted to be absolutely certain that his testimony was going to be truthful.

Q That was rather important to the preparation of your case that his testimony be truthful?

A That was important to the preparation of the case, of course.

Q Shifting gears from the pretrial phase to the month of December, 1973, and you will recall that was shortly after the jury verdict of the case and before the new trial motion --

MR. SAGOR: Excuse me. Counsel I think means '72.

Q '72, yes, that period of time -- did there

come a time you were informed a man by the name of Richard Lawrence had made certain allegations about Mr. Leuci which differed from testimony Leuci gave at trial?

A Yes.

Q Can you tell me when those allegations were brought to your attention?

A No.

Q Approximately?

A No.

Q Was it before the new trial motion?

A I don't recall.

THE COURT: Just a moment, please. When did you leave the United States Attorney's office as head of the Criminal Division?

THE WITNESS: Approximately May, 1973. It was either the last week of April or first week of May.

THE COURT: Did you hear about these allegations, Lawrence allegations, before or after you left the United States Attorney's Office?

THE WITNESS: Before.

Q You do not recall at this point whether you heard about those allegations before or after the new trial motion was filed?

A I don't recall whether I heard about them

before or after the new trial motion was filed.

Q May I show you your affidavit in this case?

A Sure.

Q Does that refresh your recollection?

A No, because I don't know when the new trial motion was filed, Mr. Dershowitz.

Q Can you tell us on the basis of this affidavit whether it refreshes your recollection as to when you were first apprised of Mr. Lawrence's allegations?

A According to that affidavit, which was, I think, drafted after our conversation with Mr. Sagor and Mr. Sherman, I was apprised in early January, 1973, and I think that's probably as accurate as I can get.

Q Would it refresh your recollection to know the new trial motion was argued and the hearing held around January 26, 1973?

A Would that refresh my recollection?

Q Yes.

A For you to tell me that?

Q Yes.

A No, it would not refresh my recollection.

Q You have at this point no recollection that at the time that the Baron came to it with the serious allegation there was then pending a new trial motion?

A No, I don't have any recollection of that. I'm not disputing that. I'm saying I don't have any recollection.

Q In your affidavit you indicate that you got the job of coordinating the investigation of the accuracy of the Baron's allegations; do you recall that?

A Yes.

Q And in coordinating this extensive investigation of the Baron's affidavit it wouldn't have been extremely important to you to know that there was a new trial motion pending making exactly those same kind of allegations?

MR. SAGOR: Objection, your Honor.

THE COURT: Overruled.

A Would it have been important at that time?

Q Yes.

A Sure, it would have.

THE COURT: This raises a legal question I would like to hear you on, Professor. Assuming that -- and I do not characterize the conduct of the United States Attorney's Office in this way -- but merely from the point of putting the legal question to you, assuming that such information came to the attention of the U. S. attorney before the trial ended and it was deliberately suppressed,

we both know that would have one type of consequences. If it were negligently suppressed before the verdict came in that might have another type of consequences under the existing cases. The point I want to put to you is, once the finding of guilt is made and this conduct -- let's assume the worst for purposes of this discussion -- assume that it takes place in connection with the motion for a new trial as opposed to during the trial itself, before the determination of guilt, what are the consequences you suggest might flow from that?

MR. DERSHOWITZ: We are preparing an extensive legal memorandum on that issue. It is our theory there is a continuing obligation on the part of the government to reveal evidence at this point and when the government comes into possession of such relevance to the trial court's determination of new trial motion it is under obligation to bring that to the attention of the trial court and defense counsel. It is especially compelling when this is done at a time when a first new trial motion is pending and prior to sentencing.

We think it is a continuing obligation, but especially when a member of the United States Attorney's Office sits in this very courtroom and hears a judge

announce from the bench that I might be inclined to grant a new trial if I believe the witnesses were telling the truth, but these are derelicts, drunk addicts, people who I would never give any credibility to, and when that very United States attorney had in his possession corroborating evidence by a nonaddict, by a person Leuci had sworn was a reliable informant, who had gotten numerous search warrants on the basis of his reliable information, for that United States attorney not to bring that information to the attention of the judge is simply shocking.

THE COURT: It may be shocking but what do you suggest the legal consequences are?

MR. DERSHOWITZ: That the new trial must be granted, and that at least the defendant must be put in the same situation he would have --

THE COURT: You tell me the new trial must be granted although in fact the information is not available before the determination of guilt, although the defendant has been on bail ever since and although the information has come to the attention of defense counsel in sufficient time to make a motion for a new trial based on the very information which you claim to have been suppressed before the imposition of final sentence,

is that correct? Is that your legal point?

MR. DERSHOWITZ: That's one way of characterizing it. I would characterize it differently. It seesm to me all experienced lawyers know that a new trial motion filed immediately after the jury verdict is given some different consideration from a new trial motion filed a year or so later. The new implicitly and explicitly recognizes that kind of difference.

THE COURT: Do you anticipate this motion will get any lesser or greater consideration than the previous --

MR. DERSHOWITZ: There are cases that hold if a new trial motion is filed a year, two years or 18 months after the verdict it is deserving of somewhat less consideration than a new trial motion made immediately upon the --

THE COURT: Let me make one thing perfectly clear, as the expression goes. There will be every bit as much attention and consideration given to this motion as there was the last.

Go ahead.

MR. DERSHOWITZ: Indeed, the government in its brief argues that less consideration should be given to this motion and repeatedly emphasizes the fact

that this is the second new trial motion, that the first was not appealed. Of course --

THE COURT: That does not cause any sympathetic response from the court. Go ahead.

BY MR. DERSHOWITZ:

Q We are back to the situation where you had a job of coordinating the investigation of the accuracy of the Baron's allegations. Do you remember precisely what you did in connection with that job?

A Sure. I received whatever information was available from Mr. Sherman who really conducted the investigation.

Q Can you tell us what information Mr. Sherman gave you?

A Well, he gave me a number of things and I can't recall all of them because I haven't had any conversations with Mr. Sherman or with anyone else to prepare for that.

When do you want to know or do you want to know the totality of everything?

Q I would like to know what you did, when you were given the job of coordinating the investigation to determine the accuracy of the Baron's allegation.

A Well, I was given the job of coordinating it

from the U. S. attorney's point of view. The decision had been made by Mr. Seymour that the investigation itself was to be conducted, I guess, by Mr. Sherman, who was at that time -- I don't know what the name of the agency was at that time; I think it has now changed names and I am not sure when the name change took place -- but we did discuss, myself, Mr. Seymour, Mr. Sherman, and maybe other individuals as well, what we should be doing, and it was determined that we should conduct as intensive an investigation as we could to determine the truth of the allegation. Along those lines we asked Mr. Sherman to go out and corroborate as much of the story as he possibly could and I would check with Mr. Sherman periodically once or twice a week to find out the progress of that investigation, but the investigation was conducted primarily by Mr. Sherman.

Q Do you remember what it turned up? Did it corroborate any of the details of the Baron's affidavit?

MR. SAGOR: Excuse me, your Honor. May the witness finish?

THE COURT: Have you finished that answer?

THE WITNESS: Pretty much, your Honor.

Q Could you tell us whether or not Mr. Sherman told us he was able to corroborate any of the details of the Baron's allegations?

A I believe he did corroborate the fact that there had been some transactions between Mr. Louci and Mr. Lawrence with regard to some cars. I also believe that he could not corroborate most of the allegations that Mr. Lawrence made about the cars. In addition to that, there was somebody that Mr. Lawrence claimed, I don't remember whether his name -- it was only a first name, John, or something like that -- who was the intermediary in the transaction, and we made great -- we suggested to Mr. Sherman that he reported back to us that he had made great efforts to locate John to identify him so that we could interview him, and my recollection is that Mr. Lawrence could only identify John because he had been to his house or something like that, and we had Mr. Sherman

drive Mr. Lawrence around so that he could locate or find where this so-called John was. And that turned up to be a dead end, just simply never able to locate John. Mr. Lawrence was never able to shed any additional light on that and so forth.

Now, Mr. Sherman also informed me that Mr. Lawrence was demanding, during this period of time, money in exchange for this information, and we were not happy about paying Mr. Lawrence. My recollection is fairly substantial sums of money was the demand of his making and we were not happy about paying him that unless we could determine whether or not he was really telling us a truthful story.

Finally, since we couldn't corroborate very much of anything that Mr. Lawrence was saying, we decided to give him a lie detector test, and those arrangements were made by Mr. Sherman, and Mr. Sherman reported back to me that Mr. Lawrence ahd failed, and miserably failed, the lie detector test.

Based upon the fact that we could not corroborate anything or virtually nothing that Mr. Lawrence said, based on our assessment of his credibility, both Mr. Sherman's assessment, I believe Mr. Roger's assessment and the assistants that worked with Mr. Rogers in his

office, based on what we thought were somewhat extortionate demands for money and the context in which they were made, based on the fact some of his story did not hold together on the investigation and based on the fact that the lie detectro test was miserably failed, we concluded there was no truth to the allegations and we closed the investigation.

Q Mr. Sherman told you that he had miserably failed the lie detector test?

A I don't know if he used the word "miserably." I think he told he failed almost all the questions asked.

Q You understood that as almost unequivocally failed?

A That was what was related to me and we later asked for a written report, which was later transmitted to us.

Q Could you recall whether there were any details in the Baron's affidavit that you were able to establish were false, positively establish were false as distinguished from being able to fail --

MR. SAGOR: I don't know that the Baron furnished any affidavit.

Q I meant allegations. I am sorry.

A I think that originally the Baron said he

could locate this fellow John, if I am using the right first name -- I'm not 100 per cent sure that's the right first name -- that he could locate this fellow John if Mr. Sherman took him out in the car and drove him around,he was relatively sure he could locate the house. Mr. Sherman did that, it was my understanding, and he was never able to locate a John.

It is also my understanding that Mr. Sherman concluded that Mr. Lawrence's story with regard to the cars was not accurate.

Q In what sense was his story not accurate, as you recall it?

A I don't recall it. I have to refresh my recollection some. I am only giving you my general recollection.

Q In preparing your memorandum did you have available to you any documents to help you refresh your recollection?

A What memorandum?

THE COURT: Do you mean the affidavit?

MR. DERSHOWITZ: Yes.

A Did I have any documents available to me?

Q Yes.

A Perhaps just in terms of the date, the lie

detector test, but I don't think I had any other documents available to me.

Q So your memory at the time that you wrote this affidavit is really no better than at the present time?

A It was a little better because I had just had the discussion with Mr. Sherman, very brief discussion with Mr. Sherman and a brief discussion with Mr. Sagor, neither of which I have had in preparation for the specific questions you are asking me this morning.

Q Did you ever offer the Baron $5000 if he passed the lie detector test?

A Did I?

Q Yes.

A I don't believe I ever spoke to the Baron.

Q Do you know whether anybody in your office offered the Baron $5000 if he passed the lie detector test?

A No, I don't know.

Q Did you ever tell Detective Leuci that the Baron had been offered $5000 if he passed the lie detector test?

A I don't believe I did.

Q Are you sure that you did not?

A Pretty sure.

Q So that if Leuci were to testify that he was

told --

MR. SAGOR: Objection. Why doesn't he ask a question the way it should properly be put: What did you tell Leuci. This is two days of trial training for Mr. Dershowitz. I know your Honor has given him great liberality but he should not be entitled to ask questions no other lawyer would be allowed to ask in this court.

THE COURT: I take it that ends with "I object"?

MR. SAGOR: I object.

THE COURT: Sustained. Go ahead.

Q If Mr. Leuci -- I am sorry -- if Mr. Lawrence had passed the lie detector test with flying colors would you have paid him the money?

A Would I have paid him the money?

Q Would the money have been paid?

MR. SAGOR: Objection.

THE COURT: Let me see if I can get at this a little more quickly.

BY THE COURT:

Q There was some discussion about payment to Lawrence if in fact his testimony panned out as truthful, is that correct?

A Well, it wasn't put in the context of the truthfulness of his testimony. My recollection is that he wanted to be paid a weekly salary of some kind and it was an exchange for his continuing cooperation, not only in this investigation, but in other investigations that we were thinking of launching at that time. But in determining whether or not to use him in these other investigations we were interested to see whether or not he was going to be credible and trustworthy. And when it turned out that the investigation that we conducted with regard to this matter demonstrated, at least as far as we were concerned, that he was not credible and not trustworthy, we decided to terminate our relationship with him.

Q I understand, but had the relationship gone forward, had that not been the result, was it contemplated that he would receive some form of compensation?

A Yes. But I don't believe it was ever agreed upon because my recollection is that his demands were rather substantial and I am pretty sure the agency did not want to pay that amount of money.

THE COURT: Go ahead.

BY MR. DERSHOWITZ:

Q Did there ever come a time when you considered

whether or not you would turn over the Baron's allegations to the defense in the Rosner case?

A Did I ever consider that? I am sure I must have considered that.

Q You decided not to do it on the basis that he failed the lie detector test?

MR. SAGOR: Objection.

THE COURT: Did you decide not to turn it over to the defense?

THE WITNESS: The answer has to be yes.

THE COURT: On what basis did you come to that decision?

THE WITNESS: On the basis of the fact there was absolutely no support to the allegations of any kind. We had absolutely no credible evidence to believe there was any truth to the allegations and this was just another in a repeated pattern that people had made allegations against a New York City policeman which happens on an every-day basis and which we didn't think were particularly pertinent to any of the issues which took place at the trial.

Your Honor had ruled during the course of the trial on the basis of certain information that had been handed up I think by a representative of the Bronx

District Attorney's office and certain information that had been subpoenaed by Mr. Krieger from the Police Department that more allegations, innuendoes and speculations on the part of people that Mr. Leuci may have participated in acts of misconduct were not going to be permitted to be utilized by Mr. Krieger either in the affirmative defense of the case or on cross examination, so our judgment was what we thought to be consistent with your Honor's prior rulings, consistent with what we thought to be the case law fact, that this could not have been any substantial assistance to the defense team because they were completely unfounded allegations and we did not believe that Mr. Lawrence was telling us the truth.

Q If he would have passed the lie detector test you would have a different feeling about that?

A I don't know because it never happened.

Q When you decided to subject him to a lie detector test did you think what might happen if he passed it?

A Of course I thought.

Q What was your thinking at that time?

A Our thinking was we would have to redouble the efforts in terms of the investigation to see whether or not we could find some way of corroborating Mr.

Lawrence.

Q You are telling us if he had passed the lie detector test and if you had further investigation and were nto able to corroborate it, you would not turn it over to the defense?

MR. SAGOR: Objection.

A I never said anything of the kind.

Q Had you made a decision at that time as to whether you were going to turn it over if he had passed the lie detector test?

A No, we hadn't made any decision of the kind. What would have happened is we would have continued our investigation had he passed the --

THE COURT: I don't think it is particularly profitable to hear these iffy questions. These are pure speculation. Go ahead.

Q Why did you decide to subject him to a lie detector test in Virginia rather than using a lie detector test here in New York?

A I didn't make that decision.

Q Who made that decision?

A Either Mr. Sherman or one of his superiors.

Q Is it a decision you agreed with?

A I had no part in the decision. They were

conducting the investigation and it was their determination.

Q Did you tell Mr. Sherman that the investigation had to be conducted quickly?

A I don't recall. It's possible that I may have said that.

Q Is it possible you told Mr. Sherman that the investigation had to be conducted quickly because there was a new trial motion pending?

A That's also possible. I don't have any specific recollection of having said that to Mr. Sherman.

Q When you conducted this investigation and gave Mr. Sherman information, I take it you gave him certain information?

A I didn't give him any information at all. The information I think Mr. Sherman got was either from Mr. Seymour or from Mr. Rogers. I was brought into it after the allegations were made, after the decision had been made to conduct an investigation, and simply was asked to coordinate it from the U. S. Attorney's Office point of view.

THE COURT: So the record is clear, by "Mr. Rogers" you mean Frank Rogers?

THE WITNESS: Frank Rogers.

Q Did there come a time when you had a meeting in January of 1973 at which you decided that you would not have any further investigation of the Leuci -- of the Lawrence allegations?

A I guess the answer to that is yes. The meeting would have been with Mr. Seymour.

Q At that meeting did you also make a decision not to turn over this information either to the defense or to the judge?

A I don't believe there was any specific discussion of that with Mr. Seymour.

Q The meeting occurred, do you remember when?

A Some time after -- what is the date of the lie detector test?

Q 17th of January.

A Some time within a week after the 17th of January.

Q Within a week after the 17th of January. The new trial motion and evidentiary hearing was the 26th of January. Do you still recall that you had no discussion as to whether you would turn that information over to the trial judge or over to the defense, who was then contemplating a new trial motion?

A I never had any discussion with Mr. Seymour

about that.

Q Did you have a discussion with anybody about that?

A I don't recall any specific discussion. It's possible that Mr. Sagor and I may have had a discussion, but I don't recall it.

Q Were you in the courtroom here when Judge Bauman ruled from the bench that he did not believe Accardia and the other two witnesses, Diaz and the other witness, in part on the ground that they were heroin addicts and derelicts?

MR. SAGOR: The record is clear on that. He was not present on that day as such.

THE COURT: I am not going to express my opinion of these four people again. It was not only because they were heroin addicts, it was because, sitting there, they had been wasted by drugs and I don't see how any reasonable person listening to them could have any confidence in what these poor people had to say. They were tragic figures. I don't expect to say that again.

MR. DERSHOWITZ: That's precisely the point. The point is that this new trial motion was denied in large part on the basis of the credibility of these derelicts,

and the point is, again, that at that very time there was informationin the Office of the United States Attorney from a nonaddict, from a person who would be as he appears on the witness stand, makes a substantially more credible witness, and I am trying to get at whether that U. S. attorney made a decision at that time or thereabouts not to turn this material over to the court.

Q You do not recall whether any decision, firm, explicit decision, was ever made not to turn that material over to the judge or to the court --

A That's not what I said. I said I didn't have a discussion with Mr. Seymour about that.

Q Did you have a discussion with anybody about that?

A I said I don't recall. It's possible I had a discussion with Mr. Sagor about it. It's also possible I had a discussion with Mr. Ben-Veniste about it.

Wasn't Mr. Ben-Veniste participating in that hearing in some way?

Q Is that a question for me?

A Sure.

Q I don't know the answer to that.

You say in your affidavit that you checked after the lie detector test was administered, you said, "I

analyzed them, the results, to see myself that the questions were sufficient to cover the allegations."

Can you explain what you mean by that?

A Well, one of the problems, of course, with lie detector tests is that the questions sometimes are couched poorly and you might be able to get a passing grade on the basis of the fact that you are literally answering a question truthfully. On the other hand, the question may be so ambiguous so the witness gets confused and that might result in a failing grade. I just wanted to look at the questions that were asked to make sure that they covered the allegations and that we could rely on that lie detector test, to the extent you ever rely on lie detector tests.

Q Are you saying you don't rely extensively on lie detector tests?

A I don't as a prosecutor.

Q Did you rely fairly extensively on the lie detector test in making the decision not to turn over this material?

A Only in part.

Q You say you read the questions and you were alert to see there were any questions or whether the questions in general were not specific or --

A I read the questions.

Q Do you recall whether any of the questions in any way asked Leuci about any of the details that he -- asked Lawrence about any of the details of the allegations he made against Leuci?

A I haven't seen the lie detector test in a long time. I would have to read it.

Q Would it refresh your recollection to take a look at the report right now?

MR. SAGOR: There is a report in evidence, your Honor. Can't the witness refer to that. If Mr. Dershowitz wants the witness to look at it, mark it for identification. That's the usual thing you do when a witness looks at a document. I have no objection.

THE COURT: Mark it.

A No. What was your question, Mr. Dershowitz?

THE COURT: First of all, I would like it marked for identification.

(Defendant's Exhibit B marked for identification.)

Q Bearing these questions in mind, did you at some point have a discussion with the Baron about his allegations?

A I don't believe I ever personally spoke to the Baron.

Q How did you get the information about what the Baron's allegations were?

A Either from Mr. Seymour or from Mr. Sherman or from some representative of Mr. Roger's office or maybe a combination of all three.

Q Did you see a written memorandum detailing the Baron's allegations?

A I don't recall.

Q Do you recall whether you were told virtually everything the Baron had said or just given a rough summary of what he was saying?

A How would I know whether I was told virtually everything the Baron said?

Q Is there not a difference between being given a two or three-minute summary and being told there are six or seven hours of tapes about what the Baron said, would you like to sit and listen to them?

A There is a difference.

Q Which of those two things is closer --

A I did not sit and listen to those tapes.

MR. SAGOR: Objection. I assume there are six or seven hours of tape that existed of the Baron in January '73. I assume Mr. Dershowitz is making that factual representation in his question. I know of none. I assume he does.

THE COURT: Are there any?

MR. DERSHOWITZ: There are six or seven hours. The probably came -- we know that there are tapes that came into existence somewhat later than that. That were probably part of an on-going investigation. There are allegations in the affidavit that there were tapes before that. I am going to question him about whether there were tapes in existence before that as well.

THE COURT: The objection to that particular question is sustained. Let's move along.

Q Recalling your reading of this polygraph report, consider the following question:

"Did you give Leuci a hundred dollars per week to keep him from arresting you from 1968 to 1971?"

Would you regard that as an appropriate question designed to test the truth or falsity of specific allegations?

THE COURT: I hate to tell you this, Professor, but we are not going to sit here and have you go down that list of questions and ask him whether he regards that as

appropriate. That is not what I am here to determine.

MR. DERSHOWITZ: I was going to ask him about one question. He did say in his affidavit he went down the list --

THE COURT: Unless you qualify him as an expert on the polygraph and indeed produce evidence of the effectiveness of the polygraph, which so far has not come to the attention of any Court, I will ask you to move on to something else.

MR. DERSHOWITZ: Fine.

Q The jury in the Rosner case was told, I take it, that Mr. Lawrence -- that Mr. Leuci, excuse me, had committed four crimes, is that right?

MR. SAGOR: I object, your Honor. It is a matter of what --

MR. DERSHOWITZ: I am laying the foundation for another question.

MR. SAGOR: Why can't he ask a question as opposed to laying a foundation. I object.

THE COURT: Overruled. It is quicker to overrule this than to get into a squabble about this.

Go ahead.

A Mr. Leuci so testified.

Q If the jury had known of Leuci's corruption, would

that have been derogatory to the Government's case in your view?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q Did you make an argument to the jury, did you make an argument in the case -

MR. SAGOR: Objection.

MR. DERSHOWITZ: May I continue the question?

THE COURT: You can put the question.

Q Did you make an argument in the case that evidence of Leuci's corruption in excess of what he testified to would have been derogatory to the Government's case?

MR. SAGOR: Objection.

THE COURT: Sustained.

As I understand it, and I do not invite discussion as to this, we are here for a very limited purpose. We are here in effect to find out, among other things, so far as this man is concerned, whether or not the Government suppressed evidence and if it did, was it done purposely or negligently. That's all so far as that is concerned.

MR. DERSHOWITZ: Since you have not invited argument, I will not respond.

May I have one moment, please?

THE COURT: Yes.

I plan on sitting through until 12.30 unless counsel want a recess. But I plan on sitting through.

Q Were you aware at the time you made the decision not to have further investigation of the Baron that the kind of allegations made in the new trial motion that was then pending were similar to those made by the Baron?

MR. SAGOR: Objection, your Honor. The witness has said --

THE COURT: Overruled.

A Well, the answer to that is yes and no.

Q Would you explain that answer?

A Well, each of the so-called witnesses that were produced by the defense on their new trial motion said something a little bit different and as I understand the allegations, it was understood the Baron's allegations, while they were similar in part, there were also some allegations that were different.

Q Do you recall that among the Baron's allegations that he received money from Detective Leuci and gave money to Detective Leuci?

A Do I recall that?

Q Yes.

A I have a vague recollection of that.

Q Are those allegations similar to the allegations

made in the new trial motion?

A I don't recall.

Q Were you aware -- when did you become aware that the Judge, Judge Bauman, had denied the new trial motion?

A I'm not sure. I think I went off on vacation some time around that time. I generally take a winter vacation around that time. It may be that it was co-existent when the decision was made.

Q Did there come a time when you were apprised that the Judge turned down the new trial motion?

A Of course.

Q Did you read or hear about the transcript or the statement the Judge made from the bench?

A Probably in general terms.

Q Were you aware of the fact that he turned it down, in part, on the credibility of the witnesses?

A I really can't tell you that, Mr. Dershowitz. I was really interested in the result at that particular point. We were confident that we were going to win the motion, of course, based on the totality of everything that was produced at that trial. Or at that hearing. I don't recall now if I was specifically told that part ofthe decision was based upon the credibility of witnesses, but

it is possible.

Q Do you recall an incident at the trial where a juror brought to the attention of the Judge the fact that she had heard in a subway station a discussion about Leuci being a corrupt cop for many years?

MR. SAGOR: Objection.

THE COURT: Sustained.

MR. DERSHOWITZ: One more moment, your Honor.

Q When you made your decision not to turn over the Baron's allegation to the defense, did you have in mind the incident of the juror that I just described?

A Are you saying was the decision related?

Q Did you have it in mind at the time when you made your decision not to disclose the Baron?

A I don't understand that question.

Was I aware of the fact that the juror had sent in a note or that the jury had sent in a note during the course of the deliberations, yes.

At the time that we finally made the decision to terminate the Lawrence investigation without doing anything further, did I re-think back to the jury deliberations and re-think back to that note, I don't recall, but I doubt it.

Q Did you have in mind the fact that you had stated

on the record that such information would be derogatory of the Government's case and inconsistent with the detective's testimony?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q Did you express anger at Leuci when you learned of the Baron's allegations?

A When I learned of the Baron's allegations, did I express -- to who?

Q To Leuci.

A Well, no, not when I learned of the Baron's allegations because we did not tell Leuci about the Baron's allegations for a period of time.

Q Did there come a time when you spoke to Leuci about the Baron's allegations?

A Yes.

Q Did you express anger to him at that point?

A I don't have a specific recollection of expressing anger to him at that point. I am unclear in my mind as to whether or not I had one or two conversations with Mr. Leuci about that subject matter. If I had two, it is quite possible that I would have told Mr. Leuci once again, as I had done throughout the preparation for trial, that if there were any truth whatsoever to the allegations,

that he should come clean right then and there, and that if I ever learned that he was lying to us, that I would be very angry and then I would probably recommend, and I may not have used exactly that choice of words, but this is the thought that I was conveying, that I would recommend some proceedings being taken against him.

THE COURT: Would you have said it in that conversational tone you just used?

THE WITNESS: No, your Honor.

Q Did you express extreme anger at Leuci at any point in relation to the Baron's allegations?

A No, I don't believe that I did. Again, you might even characterize it as a threat.

What I was really telling Leuci, and as I did at all times during the course of the preparation for trial, is that I wanted the truthful information about all aspects of the case. Not only those aspects relating to Mr. Rosner, but with regard to the aspects involving his own prior misconduct. We went through that subject matter at great length and we made great efforts to get all information, all credible information on the subject matter. Obviously, we did not get all the credible information on the subject matter, if what I read in the newspaper this morning about Mr. Leuci's testimony yesterday is accurate.

But we did make a fairly extensive effort with regard to the -- to Mr. Lawrence's allegations, they were just not credible.

They did not come from a credible person in our opinion, were not made in a credible context, were never corroborated. Information was developed which was inconsistent. They were part of what we consider to be extortionate demands on the part of Mr. Lawrence and finally, he flunked the lie detector test.

Q Were you aware when you decided that he was not a credible person, that he had made dozens, perhaps more, warrant applications, had been the probable cause --

A No.

Q You had not been aware of that?

A No.

Q Your investigation did not turn that up?

A I didn't conduct an investigation, Mr. Dershowitz. I was never informed that he had been on dozens of warrants., as you put it.

Q Are you informed at the time you conducted your investigation that Mr. Leuci had himself testified under oath that Lawrence was a credible and reliable informant?

A I don't recall. It is possible that I was told that Mr. Leuci had used Mr. Lawrence -- well, I'm sure I

have been told that Mr. Leuci had used Mr. Lawrence as an informant. My knowledge of police affairs, it is not inconceivable that somewhere along the line Mr. Leuci may have sworn to Mr. Lawrence's credibility or reliability.

Q Would you have taken that kind of swearing as credible evidence?

A Of what?

Q Of his reliability.

A At a given time in history, certainly.

Q If you had known that he had sworn, that Leuci had sworn to the Baron's credibility within a short period of time prior to these allegations, would you have regarded that as credible evidence of his reliability?

MR. SAGOR: Objection. Reliability as to what? To make investigations or to be in an undercover buy of narcotics.

THE COURT: Rephrase it, please.

Q You described him as a person who was not credible. Would your view as to his credibility have been affected by knowledge that within a period of time shortly before that Leuci had himself testified under oath that he was a reliable and truth-telling person?

MR. SAGOR: I object to the hypothetical.

THE COURT: You may answer. Overruled.

A It would have had some impact, Mr. Dershowitz, but in connection with all the facts that we had with regard to this matter, I doubt that it would have had a major impact. The nature of the informant as a beast is one which is a very, very precarious one. May informants will give you reliable information consistently and then go off the beam and that's why we made the determination that we had to conduct a complete and thorough investigation of the allegations here to determine whether or not he was telling the truth.

Q So you testified, then, that the lie detector test would not have had major impact if it turned over that he was telling the truth, that his, Leuci's testimony that he was a truth-telling person would not have had major impact on your determination that he was telling the truth, what would have had a major impact?

A I don't know what would have had a major impact. That's asking me to speculate on what the moon is made out of.

Q What if you had learned that his allegations regarding payment of money and receipt of money from Leuci were true, would that have had a major impact on your assessment of his credibility?

MR. SAGOR: Objection to the continued hypo-

thetical?

THE COURT: Sustained.

MR. DERSHOWITZ: Your Honor, it seems to me the witness was the one who talked about this in hypothetical terms. He said it would not have had a major impact.

THE COURT: Just so you understand the basis of my ruling. I see no point in permitting an exploration of hypothetical questions. For one thing, the law does not allow it. You are asking what he would have done had certain circumstances existed. They did not exist at this time and that is the basis for my ruling.

Sustained.

MR. DERSHOWITZ: We may be able to lay a foundation for establishing they did exist at that time.

THE COURT: Go right ahead.

Q Did you have your discussion with Leuci which you described as kind of threatening him, I am just trying to use your characterization, with perjury or with some proceeding, did this occur after or after the result of the lie detector test were brought to your attention?

A I think -- it depends on if there were one or two conversations. I think that I did not discuss this matter with Mr. Leuci until after I learned of the results of the lie detector test. We had made a policy decision

not to tell Mr. Leuci about these allegations so that we could conduct an investigation and so that he would not interfere in the conduct of that investigation and so that we could complete the investigation without having him in any way contact Mr. Lawrence or contact any other potential witnesses that we were going to locate. We were very hopeful of locating this person John and we felt if we told Mr. Leuci that, there would also be some question as to whether or not he contacted Mr. Lawrence or contacted this person John or had some impact on it. That was the basis upon which we decided not to tell Mr. Leuci about it.

3 Q Did you make your decision not to have any further investigation before you had any contact with Mr. Leuci?

A No, I don't think so. I think I did, we definitely did decide to interview Mr. Leuci about the allegations prior to the time that we closed the investigation.

Q And I take it he denied all the allegations?

A Vehemently.

Q At the time when you decided to conduct the lie detector test, did you have in your possession a check or did you know of the existence of an alleged check from

Mr. -- Detective Leuci to Lawrence's wife, allegedly in payment for one of the cars?

A No. Mr. Leuci gave this, I think that check as as result of the conversation I had with him.

Q So you decided to have a lie detector test before that?

A That's right.

Q You had already decided at the time of the lie detector test, you testified, that there was no -- you could not corroborate any of the allegations?

A We could not corroborate -- the use of the word "any" is touchy there. I just don't know whether -- I think I told you that Mr. Sherman was able to corroborate something that had to do with the cars. I don't recall exactly what but we could not corroborate any parts of the allegations which suggested impropriety on the part of Mr. Leuci.

Q At that time didn't you then have evidence that, to corroborate Lawrence's claim that he had given three cars to Detective Leuci?

A At what time?

Q Before the lie detector test was administered?

A Definitely not. That was not my information. My information was quite to the contrary. Mr. Sherman

informed me that he was not able to run that down and did not believe that that was the fact.

Q He did not believe that any cars had been transferred?

A Did not believe that all three cars had been transferred.

Q Did he believe that any cars had been transferred?

A I don't recall. You have to ask Mr. Sherman that.

Q We certainly will.

Did you tell Mr. Leuci before his trial that he -- if he testified falsely, he would be prosecuted for perjury?

A I am sure I must have said that.

Q Did you mean it?

THE COURT: Oh, sustained.

Let's go on.

Q Did you give Mr. Leuci any reason to believe that although you told him he would be prosecuted for perjury prior to trial, he would not be prosecuted?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q Why did you not ask Leuci to take a lie detector test as to the Baron's allegations?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q Did you ask Leuci whether he would take a lie detector test?

MR. SAGOR Objection.

THE COURT: At what time?

MR. DERSHOWITZ: At the time when the Baron was asked to take a lie detector test.

THE COURT: I'll permit that.

A Before or after?

Q Before.

A I am not sure I even talked to Leuci about the allegations before.

Q Did you ask him after?

A I don't believe so.

Q At the time you decided not to turn over the Baron's allegations to defense attorney, did you have in mind the possibility that defense attorney might be able to corroborate some of this information?

MR. SAGOR: Objection.

THE COURT: Overruled.

A I thought that we had done a thorough investigation. I didn't think anybody could corroborate it. Obviously, I didn't believe it, Mr. Dershowitz. I didn't believe it, Mr. Sherman didn't believe it, I don't think Mr. Seymour believed it, and I don't think the people in Mr. Roger's office believed it at the time and that was based on the totality of dealing with Lawrence and all the surrounding facts of the investigation.

Q Were you as motivated to find Leuci as lying as the defense was motivated to find him to be lying?

A I believe I was. I would say the answer to that is yes. We had a number of other cases in which he was scheduled to testify, a number of investigations, and we really wanted to know whether or not the man was telling us the truth because it would have been a great possibility that there would have been a colossal waste of time to go through all those things.

Q Don't you think if you were motivated to find

out whether Leuci was lying, it would have been much to your advantage to turn this over to defense counsel who would be able to use their skills to investigate and find further corroboration?

A You really want me to answer that, Mr. Dershowitz?

Q Yes.

A I don't think that your skills are commensurate with the skills of the Government in conducting an investigation, and I think the evidence would have been misused by Mr. Rosner as most of the evidence and most of the investigation which he allegedly conducted throughout the trial was.

Q In retrospect, in light of the fact that at least some of the allegations in the Baron's statements turned out to be true, that is, the allegations concerning receiving at least one item of drugs from Leuci, money, back and forth, in light of the fact these turned out to be true, in retrospect, do you think the information should have been turned over?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q You say you were motivated to find out whether the Baron was telling the truth. Did you check out all the other witnesses named by the Baron?

MR. SAGOR: Objection.

A There weren't any, other than this person who we made extensive efforts to locate.

Q Were you ever told in March of 1973 that the Baron had made similar allegations in which he had named dozens and dozens of people?

A In March of 1973?

Q Yes.

A No, I was never told that.

Q You were never apprised of the fact that Mr. Leuci had spoken to people in the State and had made very detailed allegations?

THE COURT: Leuci or Lawrence?

MR. DERSHOWITZ: Lawrence.

A In March of '73?

MR. SAGOR: I object. The witness said no. Why do we --

THE COURT: Sustained.

The witness has answered. It doesn't help matters much if you repeat the question as to what has been answered.

Q Your testimony, as I understand it, then is that --

MR. SAGOR: Objection, your Honor. Why does

Mr. Dershowitz have to understand? It is clear on the record.

THE COURT: I didn't hear the end of the question. Go ahead.

Q Your testimony as I understand it, is that the Baron in his discussions with the Federal Authorities never mentioned any name other than John which was without a last name?

A That's my understanding and had there been anybody else named, I can tell you that I would have insisted that those people be interviewed and perhaps even be brought into the U. S. Attorney's office. We were most anxious to get as much information as we possibly could about these allegations. I have read your motion papers and seen the detail that's included in them now, and I can tell you that our investigation would have touched every one of the individuals named had that information been provided to me.

Q Did you continue to be motivated to find out whether the Baron was telling the truth in March of 1973?

A Did I continue it? The investigation was closed. Nobody else gave me any other information.

Q If other information had come to your knowledge, would you have investigated it?

MR. SAGOR: Objection.

THE COURT: I have asked you time and time again not to put hypothetical questions.

Sustained. Anything that starts with "If" I will sustain an objection to. You'll have to forgive me for raising my voice, but I have said that at least ten times in the last two days and I mean it.

Go ahead.

Q Did you ever inform other law enforcement agencies that you were interested in ongoing information developed about the Baron's credibility or about Leuci's credibility?

A Did I personally ever inform? No.

Q Did the office of the United States Attorney, to your knowledge, ever inform any other law enforcement agencies within the State of New York that they were interested in any information developed as to the Baron's credibility or as to Leuci's credibility?

A Probably in general terms we had conversations like that with both Mr. Rogers and Mr. Nadjari.

Q Did you have such conversations with Mr. Cunningham?

A I personally, no.

Q Did your office, to your knowledge, have conversations with Mr. Cunningham?

A In a general sense, I would think yes.

Q Did you become aware of the existence of a series in March of 1973, of a series of tape recorded interviews with the Baron done by Mr. Cunningham and Mr. Wright?

MR. SAGOR: Objection. The third time, your Honor.

MR. DERSHOWITZ: I never asked about tape recordings, your Honor.

THE COURT: Sustained.

Q Were you aware that the Baron had made statements to Cunningham in January and December, December of 1972 and January 1973?

A Was I aware he had made statements to Mr. Cunningham?

Q Yes.

A I was told he made statements to somebody in Mr. Roger's office.

Q Did you find out whether these statements contained details?

A Did I find it out?

Q Yes.

A Somebody gave me the general thrust of the allegations. Now, whether or not they gave it to me in terms of saying this is what Mr. Lawrence said to Mr.

Cunningham, I can't tell you.

Q Did you ever ask anybody in that office whether there were any names mentioned in the Baron's allegations other than John?

A No. I never spoke to anybody in that office.

Q Did anybody in your office, to your knowledge, ever ask in December or January whether or not there were any names other than John?

A Did anyone in my office? I don't know the answer to that question. I assume that Mr. Sherman would have done that.

Q Did you ever instruct, as part of your investigation, anybody in your office to find out whether the Baron had mentioned any names in his interviews with anybody in Mr. Cunningham's or Mr. Roger's office?

MR. SAGOR: I object to that line of questioning.

THE COURT: You may answer.

A No, I didn't instruct anyone in my office to do that. The investigation was being conducted by Mr. Sherman. If there had been other specific allegations contained therein, I was sure on the basis of my dealings with Mr. Sherman that he would have given me that information and I would have instructed him to go out and --

Q Is it your belief --

A Do you want to let me finish my answer?

Can I have the last part reread.

(Answer read.)

A (Continuing) -- and complete all necessary interviews, and that means that I would have request Mr. Sherman to interview anybody who we would have thought had information pertinent to the allegations made by Mr. Lawrence.

Q Did you tell Mr. Sherman to interview the people in Mr. Phillips' office, Mr. Armstrong, Mr. Wright?

A Certainly. He was in contact with them.

Q You instructed them to interview --

A I knew he was in contact with them. I didn't have to instruct him.

Q Did you inquire as to whether or not any of these people had names given by the Baron other than John?

A I did not ask that specific question. I did specifically discuss with Mr. Sherman whether or not there was anybody else that we could have interviewed and the answer was, not that he was aware of.

Q Did you ever ask Mr. Sherman to get a report of the investigation done in Mr. Phillips' office?

A Did I ever ask him to get that?

Q Yes.

A I don't believe I ever asked him to get that.

MR. SAGOR: Excuse me, your Honor, for the record, there is a Mr. Phillips in the United States Office. I think he means Joseph Phillips, Mr. Nadjari's second in command.

THE COURT: Is that right?

THE WITNESS: Yes, sir, I guess that's the Mr. Phillips he is referring to.

Q Did you ever ask to see any reports compiled in Mr. Nadjari's office by anybody in that office, relating to the allegations made by Baron?

A No. That was all Mr. Sherman's responsibility.

Q And Mr. Roger's office?

A It would have been determined between whatever the name of the agencies, Bureau of Narcotics & Dangerous Drugs or Drug Enforcement, and Mr. Seymour, that they would have conducted the examination.

THE COURT: You have 30 minutes.

MR. DERSHOWITZ: I would need less than that.

Q Did you ever ask Mr. Sherman for a written report of his investigation of the Baron's credibility?

A Of the Baron's credibility, no.

Q Did you ever ask Mr. Sherman for a report in

writing of any aspect of the investigation that you have been describing here?

A I asked him for the lie detector test.

Q I asked you whether you asked him for any report that he had compiled, Mr. Sherman had compiled?

A We were in contact a couple of times a week and I was kept apprised of the situation as it went along. It was really never a necessity to get a written report from Mr. Sherman.

Q Did you tell Mr. Sherman that no written report was necessary?

A No. I would assume he would have followed whatever internal practices his office had.

THE COURT: I don't think it has been put in the record what office he was connected with.

THE WITNESS: I think his agency was, he had some affiliation with the Bureau of Narcotics.

THE COURT: Federal Bureau of Narcotics?

THE WITNESS: Right.

Q Did you ask Mr. Sherman when he came back and told you about his report, did you tell him to follow any other leads, did you suggest to him that he inquire any other way?

A No. He was more privy to the allegations than

I was. It had been decided between Mr. Seymour and Mr. Tartaglino someone at the Bureau of Narcotics, that they were going to conduct the investigation. The reason I was given to coordinate it, I had tried the Rosner case. If there was anything pertinent to our overall investigation in that case, I should have been the one made privy to the information. I touched base with Mr. Sherman at least onece or twice a week to find out what the progress of the investigation was, and to make suggestions from time to time as to what I thought should be done. We were concentrating, it is my recollection, on the two most specific allegations that could be corroborated.

One was the cars and the second was locating and identifying this person named as John, and those were the most -- the things most easy to corroborate. It was my understanding from Mr. Sherman he was never able to corroborate either of those.

Q Is it your testimony then that you never were apprised of the details of the Baron's allegations, you personally?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q Were you personally ever apprised of the details of the Baron's allegations ?

MR. SAGOR: I thought I heard sustained.

Objection again.

THE COURT: Sustained.

We have been all through this now ad nauseam, I think is the expression.

Q Are you aware that it is the general practice of the Bureau of Narcotics & Dangerous Drugs to write detailed reports of every field activity that they are asked to conduct?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q In your affidavit, in its last sentence, you say:

"This decision was premised in part on the polygraph and in part on the assessment of Mr. Lawrence's credibility, in part upon his constant demand for substantial sums of money, in part of his inability to corroborate this story and on other factors."

Can you tell us what other factors were involved?

A The inconsistency of the story in terms of his saying to us, I believe at the beginning, that he could locate this fellow John and he knew exactly where he lived and so forth and when we called his bluff, his being com-

pletely unable to produce.

Q Basically, what you are telling us then is that your decision relied extensively on his inability to produce John?

MR. SAGOR: Objection.

THE COURT: Sustained.

I believe you testified about an hour and a half ago that your decision was based on the following:

Your inability to find John, his demand for substanial amounts of money, the results of the lie detector test, which you testified he had miserably failed, and the fact that you could corroborate nothing. You referred to extortion and demand and you said that the story didn't hold together. That was your answer, was it not, to the reasons why you did not pursue the investigation once you came to that conclusion?

THE WITNESS: That's right.

THE COURT: That was said an hour and a half ago.

Q Could you explain to us in what way the story did not hold together?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q Do you remember now any aspects of the story that did not hold together?

MR. SAGOR: Objection.

THE COURT: You have exhausted that, Professor Dershowitz. The record will indicate I will now stop you from pursuing the identical line that you have gone on with for an hour and a half.

Q Was the Baron at the time he made the allegation, to your knowledge, being paid regularly by the Federal Government?

A I don't know.

Q As part of your investigation, did you check to see whether the Baron was being paid regularly as a Federal informant?

A I didn't make an investigation, Mr. Dershowitz.

Q As part of the investigation that you were in general supervision over, did you ask the person making the investigation to check whether or not the Baron was being regularly paid as a Federal informant?

MR. SAGOR: Objection. He said he didn't know.

THE COURT: I will permit him to answer that.

A I don't recall.

Q As part of your investigation, did you ask the person who was conducting it to determine whether or not Mr. Lawrence had been paid extensively as an informant and for a long period of time by State agencies?

A I didn't conduct an investigation, Mr. Dershowitz.

Q In your role as coordinating an investigation, did you ask those conducting the investigation to determine whether or not the Baron had been paid for long periods of time as an informant by State Agencies?

MR. SAGOR: Objection.

THE COURT: Sustained.

Q I take it you have read the Baron's affidavit?

A Yes. You mean in support of the motion for a new trial?

Q Yes.

A Yes.

Q You say in your affidavit the story which Lawrence recites had not contained the details now contained in the affidavit of Richard Lawrence. Can you tell us which details are contained in the affidavit of Richard Lawrence which are not in his original allegation?

MR. SAGOR: Objection.

Mr. Sherman, I assume, is being called as a witness and may be the best person to ask this. Why beat upon --

MR. DERSHOWITZ: He said so in his affidavit.

THE COURT: You may answer.

A The names of other witnesses, dates, times, places. As the allegations were given to me by Mr. Seymour and by Mr. Sherman, none of those names, dates, times and places had been imparted to us.

Q Was it part of your information that you received from the Baron that your office received from the Baron, that he had previously spoken to people in Mr. Nadjari's office?

A I don't know what information my office received from the Baron. I'm not sure that my office received any information from the Baron. I don't think, with perhaps the exception of Mr. Scoppetta, anybody from my office ever spoke to Mr. Lawrence.

Q Did Mr. Sherman tell you, as part of the report to you, that the Baron had had extensive interviews with people in Mr. Nadjari's office?

A Well, he didn't use the word extensive.

Q Did he tell you that there had been interviews with Mr. Lawrence by people in Mr. Nadjari's office?

A Yes, sir.

Q And in Mr. Roger's office?

A Yes, sir.

Q Did you ask him to follow that up and find out precisely what the Baron had told those other people?

A I didn't have to ask him to do that. I assumed he was doing it as part of his investigation.

Q Did you check to see if he did do it?

A No, I didn't check to see that he did it.

Q Did you regard that as an essential part of the investigation?

MR. SAGOR: Objection.

THE COURT: Sustained.

MR. DERSHOWITZ: One further moment, and then I think we will be through.

Q Did you personally ever interview the Baron?

MR. SAGOR: The third time.

Objection.

THE COURT: Sustained.

He says repeatedly over and over and over again that he did not talk to the Baron. What is the point in asking the same question five times?

Q Did you ever interview Jacobs and Cardi?

MR. SAGOR: Objection, your Honor. It has been brought out at trial.

THE COURT: Sustained.

MR. DERSHOWITZ: In light of the fact it was brought out at trial, I think I can premise a question on it.

Q In light of the fact you did interview Jacobs and Cardi and other witnesses who were making --

MR. SAGOR: Objection. I don't think there is any evidence he has interviewed Mr. Cardi.

THE COURT: Put the question again.

Q In light of the fact that you did interview certain people such as Jacobs who made allegations against Mr. Leuci, why did you not also interview the Baron who made allegations against Mr. Leuci?

A I wasn't conducting the investigation with regard to Mr. Lawrence. In preparing for the Rosner trial, there was some indication that Mr. Jacobs might show up as a witness or might have some relevant information. I interviewed Mr. Jacobs in connection therewith, in connection with my preparation for trial. I may even have interviewed him in connection with the preparation for the motion for new trial. I don't have any recollection for new trial. I don't have any recollection. That was simply because no investigation was being conducted with regard to the Jacobs' allegations. However, by the time I came into the picture, it had already been decided that an investigation would be conducted by the Bureau of Narcotics as to the Lawrence allegations. They were professional investigators. It had been decided to give

them the investigation.

I think Mr. Sherman was with their Inspection Service and we believed him to be competent to make this investigation and relied upon our professional agents for reports.

MR. DERSHOWITZ: No further questions.

THE COURT: Any questions?

MR. SAGOR: Briefly.

THE COURT: Is this going to trigger 45 minutes more?

MR. SAGOR: I hope I can conclude in two minutes.

CROSS EXAMINATION

XX BY MR. SAGOR:

Q Mr. Morvillo, you have seen Defendant's Exhibit B for identification. Can you identify this as the Xerox copy of the lie detector report that you received in January 1973?

A This is the report I received, Mr. Sagor. I'm not sure I received it in January of 1973.

MR. SAGOR: May this be offered as Government's Exhibit 4.

I assume there is no objection as to its authenticity?

THE COURT: Offered in evidence or --

MR. SAGOR: Offered in evidence, your Honor. I had not marked it for identification before.

THE COURT: Is there any objection?

MR. DERSHOWITZ: No objection.

THE COURT: Received.

(Government's Exhibit 4 was received in evidence.)

Q Mr. Morvillo, in January 1973, were you familiar with the case of Brady against Maryland and all its --

A I was familiar with its concept.

Q Is it fair to say in addition to that, as you understand your legal obligations, as you understood them at the time, did you understand you had any obligation in January 1973 to turn over the Baron's allegations to defense counsel or to the Court?

MR. DERSHOWITZ: Objection, your Honor. His feeling as to whether he had legal obligation is not relevant.

THE COURT: Sustained.

Q Did you understand you were doing anything improper by not turning that allegation over to the Court or to defense counsel?

MR. DERSHOWITZ: Objection.

THE COURT: Sustained.

Did you wilfully fail to turn over anything which you understood you had to turn over under Brady against Maryland?

THE WITNESS: No, your Honor.

MR. SAGOR: No further questions.

REDIRECT EXAMINATION

XX

BY MR. DERSHOWITZ:

Q Your decision not to turn over the allegations made by Mr. Lawrence was a deliberate decision, was it not?

MR. SAGOR: Objection, your Honor.

THE COURT: I am the finder of the facts and I find it was a deliberate decision.

MR. DERSHOWITZ: No further questions.

THE COURT: You may step down.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

MR. DERSHOWITZ: May we have one minute, your Honor, please?

THE COURT: yes.

MR. SAGOR: Mr. Scoppetta is waiting. He is the Commissioner of Investigations and has been waiting all morning.

THE COURT: Yes, let's put Mr. Scoppetta on the stand.

t4b

N I C H O L A S S C O P P E T T A, called as a witness by defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DERSHOWITZ:

Q Good morning, Mr. Scoppetta.

A Good morning, Mr. Dershowitz.

Q Can you tell us the circumstances under which you met Robert Leuci?

MR. SAGOR: May we have for the record who Mr. Scoppetta is.

THE COURT: You have said a moment ago he is commissioner of investigation of the City of New York.

That is a fact, is it not?

THE WITNESS: Yes, your Honor.

A I met Detective Leuci while I was working with the Knapp Commission.

Q Approximately when was that?

A It was in 1971 and it would have been in February I think.

Q Who introduced you to Mr. Leuci?

A Paul Rooney, one of the lawyers on the Knapp Commission, had previously spoken with Leuci I believe some months before I met him and he called Leuci for me and asked

him to come down.

Q Who first told you about Leuci, who first brought his existence to your knowledge?

A I think Paul Rooney.

Q What did he tell you about Leuci when he first told you about such a person?

A That he had questioned a detective from the Narcotics Division or had been in the Narcotics Division, that the information had not been terribly fruitful, but he did tell me that Leuci suggested that we might take a look at informant files and see whether or not informants actually had been given credit for cases they actually made, which I did and we were not able to prove any inconsistency and the Police Department informants files and actual cases contribute to informants.

Q At this particular time did you have a discussion with a policeman named David Dirk?

A Afterwards, yes.

Q Will you tell me what Dirk told you about Mr. Leuci?

MR. SACOR: When was this?

THE COURT: Set the time, please.

A As near as I can recall, it was some time before February. It might be a matter of weeks before the

day I met Detective Leuci that Dirk had previously told either Rooney, who told me, or Dirk may have repeated to me that he had brought information to the SIU that had not been properly investigated, that I ought to speak to Detective Leuci about that, Rooney had already spoken to Leuci I believe on that score, and furthermore that Leuci, as a detective in the Narcotics Division, ought to be somebody that I ought to speak to.

Q Did Mr. Dirk characterize Leuci to you in any way?

A Just that he was an experienced narcotics detective who had been involved in some sort of investigation or at least some sort of receipt of information from Dirk that contained -- that alleged certain narcotics traffic in, I believe, Pleasant Avenue.

Q Did David Dirk ever characterize Leuci to you in words suggesting that Detective Leuci may have himself been involved in corruption?

A No.

Q Did David Dirk mention to you a man named McGovern?

A Are you talking about Chief McGovern, Joe McGovern?

Q Yes.

A He may or may not. I knew Joe McGovern

when he was in charge of internal affairs for the Police Department.

Q Did he tell you Mr. McGovern had certain information about Detective Leuci?

A No. I learned there was information, but not from Dirk.

Q You did learn Mr. McGovern or his office had information regarding Leuci's activities?

A I don't think it is McGovern, and I don't think it's IAD, but it was the Police Department.

Q At what point did you first learn that there was information in files concerning allegations about Mr. Leuci relating to his corruption?

A I learned of the -- before I met Leuci II had heard there had been a Police Department and BNDD inspection, I believe -- investigation of an allegation concerning Leuci in corruption that had been unsubstantiated, but they had such an allegation. About the same time, in reviewing some Police Department files in the Intelligence Division, I came across allegations against a lot of police officers and others, and a number of which involved narcotics detectives.

Q Did there come a time that you learned that Bob Leuci's first cousin was a man named John Lusterino?

A I learned that some time later I believe.

Q Could you tell us approximately when you learned that?

A Some time during the investigation.

Q In February, March? Can you date it at all?

A I don't know, but it would be, I believe, after the investigation had gotten under way, considerably under way.

Q Did you learn this from Leuci or some other source?

A I believe I learned it from Leuci.

Q Did that make him a somewhat more attractive candidate for the role that you had in mind for him?

MR. SAGOR: Objection. Can't we have conversations?

THE COURT: Sustained.

Q Did you have any conversations with Mr. Leuci --

THE COURT: Let me ask you: at the time you learned about the possible relationship between Leuci and this man Lusterino, were you then functioning with the Knapp Commission or by then had you gone over to the U. S. Attorney's Office?

A It's clear I was still working with the Knapp Commission, although we may have established a liaison with the U. S. Attorney's Office during that time because this happened fairly soon in the investigation that we began working with the U. S. Attorney's office and had a liaison.

THE COURT: All right.

Q When did you first ask Detective Leuci whether he himself had committed any criminal acts?

A I think that conversation was perhaps -- it is the second conversation I had with him. I met Leuci at the offices of the Knapp Commission. It was sort of late in the day, evening, and we talked for a few hours then, and the next day I spoke with him and during that conversation he talked about corruption of the Police Department and during that conversation he acknowledged he himself had been involved in police corruption.

Q Can you tell us precisely what he told you about his own police corruption?

A In general terms what he said was that he had been an intermediary in more than one situation in the sale of information in narcotics cases between police officers and prospective defendants in narcotics investigations, and in response to questioning he described a

case and how that happened, a typical -- an example case, and told me that police officers had been working on a defendant, had contacted him to contact the defendant, he had done so, money had been passed from the defendant through him to the police, and I think he got a percentage of whatever was paid.

Q Did he tell you at that time why they had selected him as an intermediary?

A Just that he could reach out for these defendants.

Q Did he tell you why he could reach out for those defendants?

A I don't recall specifically that he had any particular entree. I regarded it as being a protective device for the detectives who had been working on the defendant. That's what I thought was the reason for using an intermediary, I believe.

Q At this point in time you didn't know that he had a first cousin John Lusterino who was in organized crime and yet he told you he was an intermediary between defendants in organized crime and detectives.

Did you ask him how it was he was able to play that role?

A He said he would reach out to them, find them

and talk to them.

Q He told you he would reach out for them rather than they would reach out for him?

A I believe that's how it worked, yes.

Q Did he tell you about any situations where they reached out for him, that is, where defendants sought him out and asked him to be an intermediary?

A I don't think so.

Q Did he tell you how it was that he was able to have contact with these defendants in organized crime?

A He would find them. I don't think he actually told me but I think, what I assumed is, that this fellow was under investigation, the police knew where he was, the police officers who were asking him to do this could just give him the information, he would go and find the fellow and talk to him. If they knew where to tap his phone they would know where to find him.

Q He told you about one instance in some detail and then he told you there were some others like that?

A He said that this happened on more than one occasion.

Q Did he tell you precisely how many occasions it happened on?

A He didn't.

Q Did he ever tell you precisely how many situations it occurred in?

A I think the first time I learned or the only time I had any specific number was when he was being prepared feor trial where he acknowledged more specific situations than he had acknowledged to me.

Q Did he ever tell you -- I am talking about during your investigation, not the pretrial phase -- did he tell you during your investigation that there were four, precisely four and no more than four, instances in total?

A That happened fairly late in the investigation. He did say that.

Q But up to that time he would tell you generally that there was more than one incident?

A He was also reluctant to talk about his own misconduct but he told me initially there was more than one situation and described such a situation.

Q Did you press him as to the other situation?

A I asked him, yes.

Q Did he tell you about them?

A He didn't.

Q Do you recall how he put it on the tape recording that you made of him? Did he say more than one, did

he say several? Do you recall precisely how he put the quantity of crimes on the tape recording?

A I don't recall, except that it was more than one time. That was clear to me.

Q Put yourself back in time to the evening, and the evenings when he was telling you about these crimes --

MR.SAGOR: We haven't established he has been telling him about crimes on evenings or there were tape recordings.

THE COURT: We certainly know there were tape recordings which were destroyed.

MR. SAGOR: Whether there were misconduct conversations on other evenings, that has not been established.

THE COURT: Let me get one thing straight. Commissioner, first of all, I have understood you to say that on the second meeting you had with Leuci he told you of a representative type of situation, corrupt situation, in which he had participated which was typical of others, is that correct? Or did he tell you about a specific fact situation naming names, times and places, if you remember?

THE WITNESS: I don't remember that he named names. He may have told me a name of a defendant. At the time it would not have meant anything to me, but

that's precisely what happened. He gave me a representative case of saying that he had more -- this happened on more than one occasion.

THE COURT: I am getting to the point where we will recess for lunch. Is this a convenient place?

MR. DERSHOWITZ: It is, except for Mr. Scoppetta's convenience I think for another 10 or 15 minutes we can be finished with him.

THE WITNESS: May we, your Honor.

THE COURT: Go ahead. Ten or 15 minutes, fine.

Q I take it there were several evening discussions which you tape recorded?

A There were three.

Q Were there any times where Bob Leuci would say to you,"Gee, I wish you would turn off the tape for this. I want to tell you something that I don't want on tape"?

A Absolutely not.

Q The tape recordings were continuous?

A Once they started they were continuous. We had a lot of conversation through the evening but the tape recordings themselves were continuous.

Q Did you ever promise him explicitly or implicitly he would not be prosecuted for crimes that he told you about?

A What I told him was that these statements that he was giving us would not be used against him, but I told h im then too that I thought my position as associate counsel for the Knapp Commission, not being a prosecutor, was somewhat ambiguous, certainly we could not give him immunity, we didn't have immunity power, it's something the Knapp Commission wanted but didn't get, and we could not give it, but as much as the law permitted us, these statements would not be used against him although if somebody made a case against him outside of these statements we would have no power to keep him from being prosecuted.

Q Did you ever promise him implicitly or explicitly that -- I withdraw that.

Did you ever tell him that you were not particularly interested in his past criminality, you were interested primarily in what he would do in the future and the degree of corruption involved in the various areas you were investigating?

A It was never put like that. I think what I said to him was that we hoped we were trying to convince him to undertake an investigation in an undercover

capacity.

Clearly the emphasis was on making cases but certainly part of making those cases would be to find out what involvement he had been in, and that was more the tenor of it.

Q When you found out that Leuci had been saying that he committed only four, three or four, crimes in toto, did you believe that?

A I did at the time.

Q Did Leuci tell you anything at any point which would give you reason to suspect that he had committed more crimes than that?

A Nothing I can recall. I have since seen a memorandum from BNDD that speaks in terms of his having gotten $50 on one occasion. Looking at that memo before I came to court today, and that's the first time I've seen it, I am reminded then that he told me once that he was in a bar, that a police officer had put money in the pockets of a federal agent -- this was when we were speaking to a federal representative -- and I don't recall he said he had gotten money, although as I look at the memorandum I see when he was debriefed he said he got money. That is the only occasion that occurs to me outside of what he told me earlier.

Q Do you recall ever discussing that incident with Mr. Shaw?

A Yes, I think that was at Mike Shaw's apartment.

Q You were involved with Mr. Shaw in a discussion in his apartment in which that incident you have just described was mentioned by Bob Leuci?

A Yes. I don't know that I discussed it with Shaw. My recollection of it is that it was at Shaw's apartment and that Mike Shaw was there at some time. He may have come later. We would use Mike Shaw's apartment for meetings and I would getthe keys from him and just cross the bridge. It was close to the courthouse.

Q Did you ever have discussion with Mr. Sagor or Mr. Morvillo in which they asked you what crimes Leuci admitted to you?

A Sure.

Q Did you tell them about this incident in Mr. Shaw's apartment?

A The $50?

Q Yes.

A No. As I say, I'm nto sure Leuci said he got money. As I read the memo, he said he did, but at the time we were talking about prior admissions I didn't recall

this incident and it may be because I was not certain or never did know Leuci himself got $50.

Q Did there come a time when you and Mr. Shaw had a discussion in relation to the possible turning back of the tapes to Detective Leuci?

A Yes, sir.

Q Did Mr.Shaw tell you that this would be 3500 material?

A No. I think that was an issue for him to decide, whether or not it was in fact 3500 material.

Q But there was some discussion between you and Mr. Shaw about whether this was 3500 material?

A That's what led to making the memo. The tapes were made with the condition that they be turned back when Leuci asked for them. I discussed it with Mike Shaw. The investigation was then joint with the federal government. We had discussions about turning it back and we ultimately decided we would give them back in accordance with the conditions under which they were made but we would describe that in a memo and preserve the misconduct allegation or admission.

Q Was there any discussion between you and Mr. Shaw of the possibility of having a transcript made of the tape and destorying all parts of the transcript

other than the descriptions, the transcript of Mr. Leuci's discussions of his criminality?

A I don't recall whether or not we discussed making a transcript but we decided to document the fact that the tapes were going back and document the fact that he had made admissions of misconduct to me and I did it in the form of the memo.

Q Do you recall whether or not the memo detailed the crime that he admitted to you or just mentioned that he had admitted to you a crime and --

A I think the memo describes the nature of the crimes that he admitted.

Q The memo?

A It describes the nature of it, the fact that he was an intermediary between prospective defendants and police officers, but does not describe any particular case.

Q You, of course, are familiar with what was on the tape, in reference to the descriptions of the crimes. Would you say that the description of the crimes on the tapes were considerably more extensive than the description of the crimes in the memorandum?

A To the extent that he gave a descriptive example, it is. The tape recording would have been more descrip-

tive.

Q Was it within the realm of your agreement with Mr. Leuci to make a transcript of just the description of the crimes?

A We never discussed it.

Q But you did have discussion with him as to what your obligations to him were?

A Sure.

Q Recalling that discussion, was it within your obligations as you perceived them to Mr.Leuci to preserve that transcript portion of the tape which simply described his crimes?

A Detective Leuci would have liked there to be not even a memo, but we didn't have any -- it was not up to him as to what form the memo would take or the document would take. We abided by the agreement to return the tapes, but we documented it in the form of the memo.

Q You were aware at the time you gave the tapes to Mr. Leuci that he was proposing to destroy them?

A No. I considered that a possibility but he didn't say that.

Q Did he tell you subsequently that he had destroyed them?

A He did.

Q Mr. Leuci testified that you didn't realize the material might be 3500 material until Shaw told you that, is that correct?

A Well, my experience was a state prosecutor. Then I went to the Knapp Commission. I didn't consider myself an authority on what could or could not be returned under the Federal Rules. I discussed it with Mike Shaw. I know that the issue was whether or not these tapes could be returned and from what I now know I assume 3500 was a key consideration. And in my mind, with state experience, where we don't have a 3500 section, I would think it would be Brady v. Maryland.

Q Mr. Shaw mentioned to you though they were at least arguable --

A He was concerned whether or not this was 3500 material.

Q Were you an assistant United States attorney at the time Leuci discussed the facts of what you described the policeman putting money in his pockets?

A It's hard for me to say. I 'm not sure. I was with the Knapp Commission until July 1st of 1972. I met Leuci in February. So that from February -- or '71 I believe -- yes, '71. In February of '71 I met Leuci and we were working the investigation, I would say,

probably in March, federally, so it could have been any time after March up until July 1st when I would have been with the Knapp Commission, and then I was special United States attorney from July on. I'm not certain.

Q In deciding to use Detective Leuci in this very important role, was it not important to you that you pick a man who would appear to be corrupt?

A It was helpful if he would be accepted in corrupt circles, sure.

Q Would it be valuable for it to be a man who had a reputation as being a corrupt cop?

A Sure.

Q Did you inquire as to whether or not Leuci did have such a reputation?

A Well, I knew there had been allegations against him. Then I spoke with him and he said that he himself had been involved in corruption and it would appear he would have been an ideal candidate for this kind of undercover investigation if he was sincere, and I believe he was sincere, in carrying out, and I think the subsequent events of the following year and a half or two years showed that he was very effective.

Q When he told you, in his long years as a policeman, there had only been at most four instances when

he acted as a middle man in corruption, didyou regard that as appropriately characterizable as being a corrupt cop?

A I would say so. Four situations of corruption seeem fairly sizable to me.

Q Did you suspect at any point in time that he might have had more extensive history of corruption himself than he told you about?

A I suppose so. It's hard to think back now, but if a detective is ready to tell you he was involved in corruption on one or four occcasions I suppose the possibility exists he did more than that. That's what he said, that's all I knew, and that's what I believed at the time, because by then we had all that experience with him.

Q Had it been your experience when a person tells you one, it may be two, and when he tells you four it may be eight?

A I think the experience varies.

MR. SACOR: Objection, your Honor.

THE COURT: Sustained.

MR. DERSHOWITZ: No further questions, your Honor.

THE COURT: Any questions?

MR. SAGOR: One or two, your Honor.

May this be marked Government's Exhibit 6 for identification.

(Government's Exhibit 5 was marked for identification.)

CROSS EXAMINATION

BY MR. SAGOR:

Q Mr. Scoppetta, can you identify Government's Exhibit 5 for identification, a Xerox copy of the memorandum you referred to concerning the one that you made when you had given back the tape recordings to Mr. Leuci?

A That's true.

MR. SAGOR: I offer that, your Honor, as 5 in evidence.

THE COURT: Any objection.

MR. DERSHOWITZ: No objection.

THE COURT: Received.

(Government's Exhibit 5 was received in evidence.)

MR. SAGOR: Your Honor, in view of the time I have no further questions. If I have a few more I hope we can reserve the right to recall him, but at this time I see no pressing need to ask further questions.

mpa22 Scoppetta-

THE COURT: You are excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: 2:15, at which time I expect the government to be in a position to tell me in response of what I propose to make available.

(Luncheon recess taken.)

AFTERNOON SESSION

(2:15 p.m.)

THE COURT: Let's see what we can do about the government's response.

MR. JAFFE: Your Honor, with regard to what is dated the June 20th memorandum to the file, we have -- we will consent, without any problem, to turn over pages 1 through 21. Then I have some questions just as to the court's direction and I think we are in accord and I don't think there will be any problem. If I could take minute of the court's time.

THE COURT: Yes.

MR. JAFFE: You also directed us to turn over pages 22, 23, 24 and 2 up to and including paragraph (e), is that correct?

THE COURT: No. On the first line, "Baby Face was a detective named." That's where it ends.

MR. JAFFE: So we do not turn over page 25 but we include up to that --

THE COURT: Only those few words that I have read on page 25.

MR. JAFFE: Ending with the word "buy"?

THE COURT: No, ending with the word "name." Is that clear.

lza2

MR. JAFFE: Delete the rest of the page, your Honor?

THE COURT: Yes.

MR. JAFFE: On page 26, paragraph (i), we are to turn over, is that correct?

THE COURT: (i) is not included. I misspoke when I said it was this morning.

MR. JAFFE: We are to turn over beginning with 26(j), is that correct?

THE COURT: It starts on 25. Through -- to but not including 26(i).

MR. JAFFE: Is deleted? I am sorry, Judge. I don't follow you.

THE COURT: You are right. We are taking out 25(e), (f), (g) and (h) and (i). All right.

MR. JAFFE: With regard to 26 (j), the government would consent to turn over beginning at 26(j) beginning with the line "With regard" up to the paragraph ending "among the four," deleting the names contained therein.

THE COURT: Yes.

MR. JAFFE: However, your Honor, we would ask that we not have to turn over the rest of page 27.

THE COURT: Yes.

MR. JAFFE: 28, 29 and 30 up through 31 --

THE COURT: No, up through, on page 30 --

MR. JAFFE: Our question was about the paragraph delineated (s).

THE COURT: No. I indicated this morning 30 through (4); not (s).

MR. JAFFE: 31 and 32 up to paragraph (c), 32(c), ending with "had spent the money"in (c). That's where you indicated, I think, to double bar after the words "had spent the money."

THE COURT: That's correct.

T1B pm1 lzs

MR. JAFFE: The rest of 32 is deleted?

THE COURT: That's correct. And the names are to be deleted from B and C.

MR. JAFFE: On page 33, B-1 is deleted?

THE COURT: Just a moment. B-1 is deleted, yes.

MR. JAFFE: On page 34, E-1 is deleted.

THE COURT: No, what is deleted in that one is the last sentence of E-1, is that clear?

MR. JAFFE: So the sentence ends "scene were".

THE COURT: Are we talking about E-1?

MR. JAFFE: Yes.

THE COURT: What I am making available is "Leuci indicated a scar had been made." That is where it ends.

MR. JAFFE: On page 35, Paragraph C, your Honor indicated to furnish that but eliminate names and inquiry. I didn't follow that instruction. I wanted to get some guidance from the Court on that.

THE COURT: I want the names eliminated from that. In other words, I want them to know that it is along lines, the principal part is he would get four or five bags or a couple bags of narcotics before going to see them, et cetera. From thereon.

Do you see that?

MR. JAFFE: Yes, sir.

THE COURT: "Leuci said he followed this practice from 1966 through 1970."

MR. JAFFE: Just eliminate the names from that paragraph?

THE COURT: Yes.

MR. JAFFE: D and E are deleted?

THE COURT: Yes.

MR. JAFFE: I believe your Honor indicated page 36 was deleted.

THE COURT: Yes.

MR. JAFFE: Through H-3 on 37?

THE COURT: 37 only shows H-1.

MR. JAFFE: I'm sorry, your Honor, it is part of the G designation, the last sentence "Who wanted to buy junk" is deleted, through there. The first four paragraphs on 37 are deleted. Turn over to H-1 --

THE COURT: Yes, the first four paragraphs are deleted.

MR. JAFFE: With regard to H-1, the Government would ask that the names be deleted.

THE COURT: I have already ordered that.

In H-1 eliminate the name.

MR. JAFFE: 38 and 39 are deleted.

THE COURT: Yes.

MR. JAFFE: 40 is deleted except for B-3 with the names eliminated.

THE COURT: Yes.

MR. JAFFE: 41 is deleted.

THE COURT: Except that I have the last page with the names deleted, is to be turned over.

MR. JAFFE: On 41, your Honor?

THE COURT: 41, yes.

Wait a minute, I beg your pardon.

Yes, last paragraph with the name deleted and that's all.

MR. JAFFE: On page 42, your Honor --

THE COURT: First paragraph with the names deleted.

MR. JAFFE: The remainder is deleted?

THE COURT: Yes.

MR. JAFFE: 43 is deleted.

On page 44 --

THE COURT: The very top. In other words, not the first full paragraph but above that.

MR. JAFFE: Yes, your Honor.

THE COURT: On page 44 eliminate the names.

MR. JAFFE: Paragraph 2 is to be turned over.

THE COURT: Yes, Paragraph 2 is to be turned over.

MR. JAFFE: B-2 is deleted.

THE COURT: Yes.

I want the record to indicate I deleted that because the information contained in that is perhaps reproduced in four other places made available to defendant.

Go ahead.

MR. JAFFE: With regard to page 45 --

THE COURT: I have authorized on page 45, B-3, Paragraph 2 and --

MR. JAFFE: Should be turned over?

THE COURT: Yes.

MR. JAFFE: 46 is deleted.

THE COURT: No. The first paragraph on 46 is not deleted with the possible exception of one name. You see the one I mean?

MR. JAFFE: Yes, your Honor.

On 47, 3-F is the only paragraph to be turned over.

THE COURT: That's correct.

MR. JAFFE: I assume, your Honor, the names are deleted on the ones turned over.

THE COURT: Yes. I want it to be clear. The

names of those people which are not generally known. Some of the other things that have run through the fabric of this case, since day one, I don't mean to delete those, but any people who may be damaged by the unproved allegations whose names have not previously surfaced or any situation in which there is an ongoing investigation.

MR. JAFFE: Page 48, the last paragraph is to be turned over with the names deleted.

THE COURT: Yes.

MR. JAFFE: Page 49 is deleted.

THE COURT: Yes.

MR. JAFFE: Page 50, Paragraph H is to be turned over.

THE COURT: Yes, unless some name is questioned.

MR. JAFFE: 51 through 57 are deleted.

THE COURT: That's correct.

MR. JAFFE: 58 is deleted except for the paragraph delineated "Richard Baron Lawrence" which carries over to page 59, and 59, the other paragraphs are deleted.

THE COURT: That's correct. I have gone up through page 60. I shall announce the remainder of the rulings on this exhibit tomorrow.

MR. JAFFE: Very well, your Honor.

In agreeing to turn this information over to

defense counsel, may we ask the Court that this document remain subject to the protective order and that this information not be divulged to the press and that there be no extra judicial statements made about any of the material according to the terms of the order signed by your Honor?

MR. DERSHOWITZ: No objection.

THE COURT: So ordered.

MR. DERSHOWITZ: We would also like to ask for disclosure of the letter which was sent by Mr. Jaffe to your Honor, subject --

THE COURT: By Mr. Jaffe?

MR. DERSHOWITZ: Yes, to your Honor, at the time when we had a petition for certiorari. We have never seen it, of course, and perhaps it was by Mr. Currani But, a letter which you described in court as dynamite, et cetera and --

THE COURT: I don't think that was exactly the word I used.

MR. DERSHOWITZ: In rather dramatic terms, in any event. It seems --

THE COURT: I will ask that be produced so I can read it.

MR. DERSHOWITZ: It seems to us if matter is

hps

duplicative which appears in many places, then there is no possible reason for not turning it over.

THE COURT: Denied.

MR. DERSHOWITZ: Let me make my record for --

THE COURT: You made the record. I have indicated where the information is contained in three or four different entities, I am not going to paw over this stuff just to get you four more statements of an identical nature made in other documents. You are not being denied the information, Professor. You are being denied the sheer repetition.

MR. DERSHOWITZ: In terms of names, we don't want names obviously that are under investigation other than if they are helpful to our investigation. Now, certain names may be necessary either to corroborate allegations that we have in our possession or to show inconsistencies with Leuci's testimony, and we would hope that at least the Government would give us any names that in their view might perhaps open up lines of inquiry in investigation.

To put it another way, it seems to me all doubts should be resolved in favor of disclosure rather than in favor of withholding and --

THE COURT: I have no reason to doubt they won't do that. They understand the spirit of my ruling. The

spirit of my ruling is to make available to you, Professor Dershowitz, that to which you are entitled in proceeding with this motion without jeopardizing the public interest. You surely understand we mean the defendant to have an appropriate disclosure without technical nonsense.

Is that perfectly clear?

MR. JAFFE: Yes, your Honor.

MR. DERSHOWITZ: We have requested various witnesses, the rights to interview them. As your Honor knows, the rule is clear, there are no Government witnesses, just witnesses.

THE COURT: That has been my view.

MR. DERSHOWITZ: On one occasion that my associate was interviewing a witness with his consent, and with his consent to be interviewed outside of the presence of the United States Attorney.

Mr. Sagor then intruded on that conversation saying he insisted on being present in that interview without asking the witness at that point whether he wanted his presence.

THE COURT: That's up to the witness.

MR. DERSHOWITZ: That's what we would hope, up to the witness, not up to the Government.

THE COURT: I have just agreed with you.

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MR. SAGOR: Your Honor, I'm not going to respond to that. Let's move on. If it becomes necessary at some point, I will. I disagree --

THE COURT: I don't see any point in going on about it. It has been my view throughout my professional life, neither side owns witnesses. There is no such thing as Government witnesses and defendants' witnesses. If any witness wants to talk with either side, he may do so. That I have said throughout the course of this case and certainly throughout the time I have spent on the bench.

Call the next witness.

MR. DERSHOWITZ: We call Mr. Sherman.

MR. JAFFE: Your Honor, just for housekeeping detail, with regard to reproducing this information that we will turn over, shall we await the Court's reading of the last 18 pages and then do it at once?

THE COURT: No.

MR. JAFFE: We will have it ready tomorrow morning.

THE COURT: Give it to him as soon as you can.